

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 15-CR-637(KAM)
5 :
6 -against- : United States Courthouse
7 : Brooklyn, New York
8 :
9 MARTIN SHKRELI, : Tuesday, June 27, 2017
10 : 9:00 a.m.
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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT COURT JUDGE, and a jury.

A P P E A R A N C E S:

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1 (In open court; prospective jurors not present.)

2 THE COURTROOM DEPUTY: This is criminal cause for
3 jury selection and trial, United States versus Martin Shkreli,
4 15-CR-637.

5 May I have the appearances, please, of the parties.

6 MS. KASULIS: Yes, your Honor. Jacqueline Kasulis,
7 Alixandra Smith, Karthik Srinivasan, FBI Special Agents Sean
8 Sweeney and Michael Braconi and paralegal Gabriela Balbin.
9 Good morning.

10 THE COURT: Good morning.

11 MR. BRAFMAN: Benjamin Brafman, Marc Agnifilo,
12 Andrea Zellan, Jacob Kaplan for Mr. Shkreli, who is also
13 present.

14 THE COURT: Good morning. Please have a seat.

15 MR. BRAFMAN: Your Honor, if I may, and the record
16 should reflect that are no prospective jurors in the
17 courtroom, I needed to raise this issue because I think I have
18 an ethical obligation to do it and complete the record. As
19 the record will reflect, we objected to members of the press
20 pool being at the sidebar. I think ultimately the Court
21 agreed with certain conditions that one member of the press
22 pool will always be present, and the concern we raised was,
23 when we raised this issue, was that the reporters would then
24 be commenting or writing about comments made by the jurors
25 during the voir dire which would, I think, unfortunately may

1 impact other jurors who claim not to be prejudiced. I don't
2 know where some of this information came from. Some came from
3 the record, some I think was wildly exaggerated, but today's
4 cover of the *New York Post* dated June 27, 2017 has a picture
5 of Mr. Shkreli and it is labeled jury of his jeers, J-E-E-R-S,
6 and the article goes on to say that 134 out of 134 jurors were
7 rejected because they were calling the defendant names or said
8 they couldn't be fair. A, it is not accurate, but now I,
9 unfortunately, have at least 35, maybe 38 jurors who passed
10 the taint test who are already I think seated and ready for
11 more questioning by the Court and the *New York Times* has an
12 article at page B5, "Presumed Innocent? Shkreli Target of
13 Name Calling At Jury Selection," and then they go on to list a
14 whole host of terrible things that prospective jurors who were
15 excused said about Mr. Shkreli.

16 Now, I know the Court instructs the jurors not to
17 read about this case, but when you are taking the subway or
18 you are just standing by a newsstand, when it is on the front
19 page with Mr. Shkreli's photograph, it is sort of impossible
20 not to notice it even if you want to abide by the Court's
21 instructions. So I think that I have to do three things I am
22 advised by my legal research and my appellate expert; one is,
23 unfortunately, to move for a mistrial and ask the Court to
24 begin again with jury selection with new panel and obviously
25 go into more detail about the taint. If the Court denies that

1 application, without waiving that issue, then I think we have
2 to start this morning with the Court's interviewing of the
3 people who are already in the box, if you will, or at some
4 point before they are sworn bring them back and ask them if
5 they have seen anything in today's papers, if they have read
6 anything and really press them on the bias issue, because I
7 think it is inconceivable to me that even a juror who wants to
8 scrupulously follow Your Honor's instructions are not going to
9 see this headline. And if they read the article, while it is
10 patently inaccurate in terms of the number of jurors who said
11 they could be fair, and this suggests that all of those people
12 who said they could be fair don't exist.

13 THE COURT: Well, Mr. Brafman, let me ask you this,
14 just in this case, short of sequester, total sequester, how do
15 we avoid having any juror serving see a headline. It is
16 unfortunate. I'm not condoning the reporting, but it is what
17 it is. I don't know how we avoid having jurors see headlines.

18 MR. BRAFMAN: That is not my concern. I have tried
19 other cases that were covered by the press and I understand we
20 live in a big city. My concern is this is the first time I
21 have ever seen where the headlines are about the jurors, what
22 they have said, what they have said at sidebar. And I think
23 the remedy, if there is one, I'm not certain, first is to not
24 have a reporter at the second session of jury selection. I
25 think the concern we raised has been borne out. There is no

1 reason why prospective jurors, sworn juror need to know that
2 people they sat with all day yesterday essentially have
3 called the defendant a series of names. It's got to impact on
4 them. So I'm not looking to avoid publicity for the rest of
5 the case. And I'm not asking for a sequestered jury, but we
6 do have a concern that the people who passed initially need to
7 be re-interviewed by Your Honor and you need to impress upon
8 them that this case has to be tried in the courtroom. I would
9 respectfully request that Your Honor not to permit a pool
10 reporter to be present or we are going to have the same
11 problem tomorrow.

12 And I'm not certain that the First Amendment right
13 of the people to know juror bias is -- outweighs the
14 defendant's Sixth Amendment right to a fair trial.

15 THE COURT: Well, if we go down that road, let's
16 hear from the press attorney because I don't want to do this
17 ex-parte. They have a strong view that they have advanced.

18 I agree with you that the comments regarding the
19 jurors was something that was a possibility given that there
20 would be a pool reporter there. Whether or not that reporting
21 of it had an impact on Mr. Shkreli's right to a fair trial is
22 a different question, and I do believe that further
23 examination of those jurors who were selected and set aside --
24 we have 47?

25 MR. BRAFMAN: Yes.

1 THE COURT: -- is warranted. And we can talk about
2 what questions we might want to ask. But, certainly, I would
3 ask them whether they saw any additional coverage, whether
4 that would have an affect on their ability to be fair and
5 impartial and see where we are.

6 Starting over would -- this could be an endless
7 cycle just given the fact that there is going to be ongoing
8 media coverage, and the longer it goes on and the more
9 coverage there is the more likely you are going to encounter
10 jurors who have seen some sort of a headline.

11 Right now we have a fair number who didn't raise
12 their hand. They heard nothing about the case.

13 MR. BRAFMAN: No, I understand that, but what
14 concerns me, and with that, I will let the record stand,
15 Judge.

16 THE COURT: But you said you had a third point.

17 MR. BRAFMAN: Yes. The third point is that the
18 comments made by all of the jurors that caused them, A, to be
19 excused for bias and cause, and, B, are reported into the
20 press are comments very prejudicial to the defendant and have
21 absolutely nothing to do with the charges in this case. And
22 the irony is that the juror bias is not the defendant is on
23 trial for something so heinous I could never be a juror; it,
24 you know, relates the the raising of Daraprim prices and they
25 report throughout the article, you know, people who said they

1 have family in members with AIDS who died as a result of this.
2 This is really terrible press and this is all, I think, as a
3 result of the press pool reporter with jurors, who were trying
4 to be candid, to their credit, to be excused, we now have the
5 balance of the jury pool exposed to the views that they made
6 at sidebar and the purpose of sidebar is so the rest of the
7 panel shouldn't be tainted. So I think whatever the press
8 lawyer tells you about the good idea to have a pool reporter
9 present at voir dire, I think, Judge, this speaks for itself.

10 THE COURT: Well, the concern, Mr. Brafman, that
11 your client legitimately expressed was that his right to a
12 fair trial and to have candid, honest, forthright disclosure
13 by potential jurors of any bias they may have --

14 MR. BRAFMAN: Yes.

15 THE COURT: -- and your concern that having a press
16 reporter would chill that ability of a juror was not borne out
17 in some ways and, in fact, I think the record should be clear
18 that you wanted to cut off juror's expressions of bias.

19 MR. BRAFMAN: I did, and they reported that. At
20 some point it became so bad that I was trying to stop them.

21 THE COURT: Right, but the whole point of your
22 opposition to having the press present was the concern that
23 jurors would be chilled in press expressing bias, when, in
24 fact, they did express that; it seemed you didn't want to
25 explore that. I am happy to do whatever we can to ensure that

1 Mr. Shkreli's ability to fairly and candidly and aggressively
2 examine potential jurors for bias is not thwarted and I don't
3 think we have done that.

4 Surprisingly, the press seems to not pose an
5 inhibition on jurors, but I think there was another request by
6 the Government sometime ago which seemed very difficult and
7 even now, as I think about that request, it seems realistic to
8 tell jurors not to look at or see anything in the press about
9 Mr. Shkreli, people we haven't even called into the
10 courthouse, just sort of a pool of folks who might be
11 available. I agree with you, you can't ignore this. It is
12 fair. We need to examine all of the jurors to make sure
13 whatever they have seen is not going to impact on their
14 ability to treat both sides fairly and maintain an open mind.

15 MR. BRAFMAN: I'm not going to belabor the issue. I
16 want to clarify two points so the record is complete. I think
17 if we go back to the transcript when we raised this objection,
18 there were two points that we made, and Your Honor is correct
19 that one of our concerns about having a press reporter there
20 would chill the jurors and that has not been borne out. They
21 have been open and candid as to how much disdain they have for
22 Mr. Shkreli.

23 The second point we made, which has been borne out,
24 is that the reporters would be reporting on jurors' comments
25 and we raised concern that they would open their phones and

1 things would pop up. And at the end of the day, when we left
2 court, everything popped up and it was all related to jurors'
3 comments at the sidebar.

4 I'm not faulting Your Honor. You were right that
5 the jurors were candid and the pool reporter didn't inhibit
6 them, but the pool reporter I think has done more to undermine
7 Mr. Shkreli's ability to get a fair trial. I'm not worried
8 about publicity in this case, but this publicity is not about
9 this case. This publicity is about jurors in a sidebar
10 conversation, out of the presence of the pool, so we don't
11 taint them, which was, I think, the whole purpose, and are now
12 exposed to a jury of his "jeers." I don't know where the *Post*
13 concludes that none of the jurors could be fair, but that's
14 what they said, which makes the people who we selected feel
15 like, you know, they don't count. And the *Times* has a whole
16 litany of name calling that is in the record, but now jurors
17 who weren't at the sidebar have it at their breakfast table.

18 THE COURT: When we get this new crew in of 60, we
19 will certainly examine what media they have seen. That is one
20 of our questions. They do come to sidebar, we probe and give
21 full opportunity to probing every potential juror on what they
22 have read. One thing I thought we could do to alleviate some
23 of the issues that you are raising would be to first ask
24 jurors whether they would be available to sit for the six
25 weeks. If the answer is no and we have heard some good

1 reasons why not, then they would get excused, and we wouldn't
2 get to the second excuse. If they could be available for six
3 weeks and they have heard about the case, I invite you to
4 probe as much as possible into possible juror bias, exposure
5 to media that may or may not have influenced their views, and
6 I think that that should address your concerns. But if you do
7 want to formally move to exclude the press, I think we should
8 have the press counsel here to be heard on that issue.

9 MR. BRAFMAN: You know, Judge, if that's what you
10 want to do.

11 THE COURT: Well, look, you are asking me to issue
12 an order that affects their interest, so I would be very
13 reluctant to do it ex-parte.

14 MR. BRAFMAN: I don't -- far be it for me to want to
15 do anything to delay these proceedings because it is in no
16 one's best interest, but how long would it take for them to
17 get here?

18 THE COURT: Well, I will ask my law clerk to give
19 the lawyer a call and tell her to get down here as soon as
20 possible. In the meantime, let me hear from the Government.
21 I'm sure they don't have a position, but they might. By that
22 I mean they may not have a position on whether the press is
23 present or not. We all have to be concerned that this trial
24 proceed in a fair manner and that both sides's rights to a
25 fair trial are protected. We had one juror who said they

1 hated the Government, anything, federal, state or local, did
2 not trust the Government. We had another juror say I could
3 never convict and she was excused I think on consent of both
4 parties.

5 MR. BRAFMAN: Yes.

6 THE COURT: So we are trying our best in a
7 high-profile, high-publicity case. Certainly nothing the
8 Government has done or you have done or the Court has done has
9 generated this press. I will leave it at that.

10 MR. BRAFMAN: We are not faulting either the
11 Government or the Court.

12 THE COURT: But we are trying to deal with the hand
13 we are dealt here and to safeguard the fair trial rights of
14 Mr. Shkreli and the Government.

15 MR. BRAFMAN: Thank you.

16 THE COURT: Ms. Kasulis.

17 MS. KASULIS: Just briefly, Your Honor. We take the
18 same position as we have with respect to the presence of a
19 pool reporter. We have no objection obviously to follow-up
20 questions regarding exposure to any media that has occurred in
21 the last day both with the jurors who have already sort of
22 passed the first couple rounds of questions and obviously with
23 respect to the new jurors we have no opposition to probing
24 with respect to what their exposure has been to the media
25 because we too want to make sure there is a fair and impartial

1 jury. We have no objection to those sorts of probing
2 questions. I think once we get past the jury pool situation,
3 then information that is in press, if there's such a headline,
4 would be what comes out in the course of trial. That is
5 something, if the jurors inadvertently saw a front page of a
6 publication, they would be basically be exposed to the same
7 thing they have already heard.

8 THE COURT: They have been instructed not to read
9 the report. Hopefully, if they saw it, they would, even if
10 they could quickly read the headline, they would not probe
11 into the depth of the article.

12 MR. BRAFMAN: The difference between this publicity
13 and what we normally have is that this is publicity which
14 reflects on the jury, not publicity that reflects just on the
15 case. It's essentially calling the jury a jury of not peers
16 but jeers. It is hard if you're a sitting juror to see that
17 and not be taken aback.

18 MS. KASULIS: Again, the Government has no objection
19 to probing the jurors with respect to any exposure and, in
20 fact, has an ability to sit and to be fair and impartial, so
21 we have no objection to those questions.

22 THE COURT: Just as a housekeeping matter, I believe
23 we have 47 in that category that we have set aside for further
24 examination.

25 MR. BRAFMAN: I believe so.

1 THE COURT: I'm hoping we have 60 right now down in
2 the jury room who can come up and resume jury selection. In
3 case you have noticed, we have four rows of six in the jury
4 box and then we have approximately, I believe, eight jurors in
5 each of the rows behind. I left that first row to my left
6 open. It is fine for interns or whoever these gentlemen are
7 to be there, but I want to make sure if Mr. Shkreli's friends
8 and family are here they have an opportunity to sit. And we
9 have reserved a bench in the back and the press pool is also
10 squeezed into those two benches on my left.

11 MR. BRAFMAN: Thank you.

12 THE COURT: Do we have anything else that we need to
13 address at this time?

14 MR. BRAFMAN: No. I think, so we don't waste time,
15 if you were to bring in the jurors and ask about the six
16 weeks, for those questions, I have no objection to you
17 discussing only at the sidebar with or without a pool
18 reporter, but I would wait for the Court to rule on the bias
19 voir dire until the press reporter's counsel arrives.

20 THE COURT: Yes. I am going to see if she can do it
21 by telephone.

22 MS. KASULIS: Your Honor, the two interns who are
23 sitting in the front row, they are assigned to our trial team.
24 They will hopefully be present and assisting. We view them
25 separate and apart from the rest of the interns in our office.

1 THE COURT: Okay.

2 Are we ready to bring the 60 up then?

3 MS. KASULIS: Yes, it is fine with the Government.

4 THE COURT: May I see counsel at sidebar just for a
5 moment, please.

6 (Sidebar conference held.)

7 THE COURT: What I was going to suggest regarding
8 Mr. Brafman's application is to have the jurors examined that
9 we selected among the 47 to see what effect, if any, those
10 reports had on the jurors and also to probe the new crew of
11 jurors to see if the press had any effect on their ability to
12 be fair and impartial. By that I mean the recent press, not
13 what they have seen and heard in the past, because I think in
14 order for me to determine whether the presence of a pool
15 reporter has had an adverse impact on the reporting and their
16 reporting of jurors' comments has affected our jury pool in
17 any regard, I would need to explore that with them. Would you
18 agree?

19 MR. BRAFMAN: Yes.

20 THE COURT: Until that happens, I don't believe that
21 it is appropriate for me to just decide that the press be
22 excluded from that.

23 MR. BRAFMAN: That's fine.

24 THE COURT: I just want to make sure that we have
25 procedures in place.

1 MR. BRAFMAN: That's fine. I think among the
2 questions, Your Honor, is I know you follow my instructions
3 and I ask you not to read anything about the case, can you
4 tell me honestly between yesterday and today any news accounts
5 that came to your attention? If so, what were they and do you
6 believe you could still be fair?

7 MS. KASULIS: Is the first of the preliminary
8 questions have you seen any press coverage in the last day and
9 if they say no, then that's that. But if they say yes, we
10 have to do additional probing.

11 THE COURT: We might be able to get the attorney on
12 by phone. We can call her in now. It is an open court. You
13 don't have any objection to me having the conversation with
14 the lawyer now?

15 MR. BRAFMAN: That's fine, as long as there aren't
16 any jurors in the courtroom.

17 THE COURT: So what I will do is we are going to
18 call Ms. Bolger and get her on the phone and advise her that
19 you have made an application to preclude a press
20 representative at sidebar; correct?

21 MR. BRAFMAN: Yes.

22 THE COURT: All right. Thank you.

23 (Telephone call initiated.)

24 THE COURT: Hello, Ms. Bolger?

25 MS. BOLGER: Yes.

1 THE COURT: Good morning.

2 MS. BOLGER: Good morning.

3 THE COURT: This is Judge Matsumoto and I am here in
4 my courtroom in the case of United States of America versus
5 Martin Shkreli. I wanted to advise you that there has been an
6 application by the defense to preclude a press reporter from
7 being present at sidebar. I will have Mr. Brafman explain his
8 position.

9 The Government, it appears, takes no position but
10 does believe, as I do, that additional probing of jurors who
11 were selected yesterday be explored to make sure that any
12 media accounts of yesterday's jury selection would not have
13 been seen by them or, if seen, not affected them.

14 Let me ask you to hear from Mr. Brafman first, if
15 you don't mind.

16 MS. BOLGER: Of course.

17 THE COURT: Mr. Brafman.

18 MR. BRAFMAN: Can you hear me?

19 THE COURT: Can you hear Mr. Brafman?

20 MS. BOLGER: Yes. If you wouldn't mind keeping your
21 voice up at that volume.

22 MR. BRAFMAN: Do you want me to approach the bench,
23 Judge, and speak from there?

24 THE COURT: Sure. One moment.

25 MS. BOLGER: Sorry.

1 THE COURT: That is all right. No problem.

2 MR. BRAFMAN: Can you hear me now?

3 MS. BOLGER: Much better.

4 MR. BRAFMAN: So this morning I made an application
5 and I will briefly restate it. I think, as you will recall,
6 the defense objected to a pool reporter being present at
7 sidebar for voir dire specifically for two reasons, I think
8 the record will reflect; first that we were concerned that a
9 press reporter being there would inhibit the jurors from being
10 candid. We were wrong on that, obviously, because nothing
11 inhibited these jurors, but we also raised the concern that
12 contemporaneous notes on what jurors would be saying would
13 then become a story in and of itself and in some way prejudice
14 the people remaining in the panel and also people who made the
15 cut.

16 I don't know what you have seen, but today's *New*
17 *York Post*, dated June 27, 2017 has Mr. Shkreli's face on the
18 cover and the headline is "Jury of His Jeers," J-E-E-R-S, and
19 the caption headline is "134 Jurors Out in Pharma Bro Trial,
20 They All Hate Him."

21 One, I think it is impossible for jurors not to see
22 this even if they follow the Court's instructions and unlike
23 publicity that arises in high-profile cases which affects the
24 charges in the trial, this publicity impacts directly on
25 jurors. In addition to which, I think the story is inaccurate

1 because, by my count, we have more than 45 jurors who have
2 said that they could serve and don't hate Mr. Shkreli, or if
3 they do, they certainly haven't said that.

4 In addition, and I'm not going to go through all of
5 them because it will take a week, but the *New York Times* in
6 the business section, at Page B5, carries the headline
7 "Presumed Innocent? Shkreli Target of Name Calling At Jury
8 Selection," and then the story, I think accurately, reflects
9 some of the bad things that jurors said about Mr. Shkreli when
10 they were at sidebar. And, you know, our concern and why I
11 think the sidebar is used when a panel is in the process of
12 being selected is to avoid something a juror says about the
13 defendant from tainting the rest of the panel, where they
14 blurt out something that gets them excused for cause but doing
15 so in a manner that taints the remaining jurors. I think it
16 is inconceivable for me that if we continue with the press
17 pool reporter at sidebar, it is inconceivable for me to
18 imagine yet another article tomorrow because I anticipate that
19 we will probably get some additional caustic comments. So it
20 is our application to not have voir dire conducted in the
21 presence of a pool person. I think the First Amendment needs
22 to, in this peculiar instance, take a back seat to Mr.
23 Shkreli's right to a fair trial, not to deny coverage of the
24 case. And the irony is that all of the nasty things people
25 said about Mr. Shkreli for the most part related to things

1 that he's not being charged with, which would never come into
2 the court, and a motion in limine, I think the Court would
3 probably preclude, unless we open the door.

4 So, this whole panel that we have now selected I
5 think is irreparably tainted, although, the Court has denied
6 my request for a mistrial, we will proceed with inquiry
7 because, you know, I think it's the second best solution if it
8 is. But I think I have made my record. I hope you get my
9 point even if you don't agree with it.

10 MS. BOLGER: I do, and I apologize for the
11 anticipated incoherence of my thoughts since this is a
12 surprise as a call.

13 THE COURT: Ma'am, first of all, could you just
14 speak slowly and loudly. We are going to try to get your
15 comments. The court reporter needs to be able to hear your
16 comments. Go ahead.

17 MS. BOLGER: Certainly, I apologize. So I think I
18 have a couple of sentiments on that. The first is obviously
19 the newspapers articles that were published discussed already
20 public facts about Mr. Shkreli, right. The only thing new is
21 people's reactions to them. The actions of Mr. Shkreli that
22 caused this sort of emotional response are public and, indeed,
23 in many cases assiduously circulated by Mr. Shkreli himself.
24 So I'm not sure what the additional harm of a juror saying he
25 doesn't like Mr. Shkreli is when Mr. Shkreli has embraced the

1 statements publicly.

2 The negative thing is not that some jurors don't
3 like Mr. Shkreli; it is that Mr. Shkreli took positions people
4 don't like and that can't be fixed by voir dire. That can't
5 be fixed by closure. That can be fixed by aggressive
6 questioning at the voir dire about what people read in the
7 paper today.

8 I want to use as an example the *Skilling* case in the
9 United States Supreme Court. The cite on that is 561 U.S. --
10 sorry, I need -- 561 U.S. -- the one I'm looking at is
11 unpublished. It is 368. In that case, actually, Skilling
12 sought reversal of his conviction on the grounds that he was
13 tried in Texas where there could be no impartial jury. And
14 the Court, the United States Supreme Court explicitly held,
15 sure, everybody here in Texas knows about Mr. Skilling, but
16 they said, "Prominence does not necessarily produce prejudice
17 and juror impartiality, we have reiterated, does not require
18 ignorance." And they then said that the solution was not
19 closure obviously but engaging in searching voir dire. I know
20 that's slightly not the same, right, because we're talking
21 about closure here. But that's the same reason that the First
22 Circuit didn't close the Tsarnaev prosecution, was the idea
23 that you could do a searching voir dire and find qualified
24 jurors, and I think you still have that option.

25 The other thing we didn't get to talk about last

1 week but I am happy to talk about now is that part of the
2 press enterprise decision we didn't talk about was that any
3 restriction on press access or public access, right, because
4 the press is the proxy for the public, that any restriction on
5 the public access to a proceeding has to be effective in
6 protecting the press interest, right. So, here, Mr. Brafman
7 is concerned about taint to the jury pool, and he is
8 suggesting that somehow limiting the access of the public
9 would being effective in limiting the taint. Well, as we saw
10 yesterday and as we saw in the paper this morning, and I did
11 read them, Your Honor, I was obviously interested, no
12 restriction on what the -- on the access of the public to the
13 voir dire is going to get rid of taint on the jury pool.
14 Those people you talked to yesterday knew all about Mr.
15 Shkreli. The point is, Your Honor, therefore, limiting press
16 access isn't going to stop people from having bad views of Mr.
17 Shkreli.

18 MR. BRAFMAN: Can I --

19 MS. BOLGER: The only thing it will stop people from
20 having is knowledge that other people have bad news of Mr.
21 Shkreli and I would submit that that knowledge that other
22 people doesn't like the guy is not a specific Constitutional
23 harm.

24 Two more quick points. One, Your Honor, is that the
25 target is flipping a lot. Last week it was juror candor.

1 This time it is bias in the jury pool. The point is that
2 there has to be a real harm here, not one that changes from
3 Thursday to Tuesday. I think that is a really problematic
4 aspect of that.

5 Your Honor, the press did exactly what you asked;
6 they didn't print personal details. They didn't print names.
7 They didn't do anything to give juror identification. They
8 protected the integrity of the process. The integrity of the
9 process is best served by the presence of the public.
10 Frankly, Your Honor, the fact that you can't find a
11 sympathetic jury to the guy, apparently, is something the
12 public has a right to know. It impacts whether this is a fair
13 trial or not, right. To me, the process is working. The
14 Skilling case would have us believe that more effective voir
15 dire, which I, like the prosecution, think is a very good
16 idea, a very searching voir dire, would fix the problem.

17 MR. BRAFMAN: Can I respond?

18 THE COURT: Ma'am, Mr. Brafman does want to respond.

19 MR. BRAFMAN: I will respond briefly.

20 (Continued on next page.)
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1 MR. BRAFMAN: I'll respond briefly and I'll say this
2 as a gentleman, with all due respect. I don't know think you
3 know what you're talking about. We are not talking about
4 publicity. You know, I've tried a lot of high profile cases
5 that were covered on a daily basis and the defendants were
6 acquitted. That is not what we're talking about and the
7 Skilling case has nothing to do with where we are here.

8 What we have is publicity that attacks the jurors,
9 not publicity that attacks Mr. Shkreli. I've never been in a
10 case where concurrent with jury selection, jurors who have
11 already been picked, if you will, or at least passed the cut
12 have been criticized openly by the media, front page, as if
13 they must be idiots because it says everybody hates Shkreli,
14 all 134 of the people who were questioned yesterday hate
15 Shkreli, and that's just not true.

16 I'm not talking about curtailing the coverage of
17 Mr. Shkreli's trial and I understand that Mr. Shkreli, God
18 bless him, has created part of the problem by being notorious
19 before he got here. I accept that part of the responsibility.
20 What we're talking about is brief closure for a couple of
21 hours today so that we can pick the rest of this jury without
22 tomorrow's headlines calling those people anti-Shkreli people,
23 even those who said that they could be fair.

24 There is a question today not about closing the
25 courtroom for the trial and if they want to write about all of

1 the information concerning Mr. Shkreli, God bless him. That
2 has not been our application and we have never shifted our
3 opinion. If you look at the record we made, it was both juror
4 candor and also contemporaneous postings that we thought would
5 influence the jury in the course of jury selection.

6 So, none of the cases you cite have anything
7 whatsoever to do with the issue before us this morning.

8 Thank you.

9 THE COURT: Did you have anything else, Ms. Bolger?

10 Just for the record, we have on the phone Kate
11 Bolger and can you just state who you represent for our
12 record, please?

13 MS. BOLGER: Yes. I represent the parties I
14 represented last week which I believe to be Bloomberg, the AP,
15 New York Times, the New York Post, the New York Daily News and
16 Reuters which are largely the pool reporters in the
17 courthouse.

18 MR. BRAFMAN: Can I also mention just so the record
19 is complete, Mr. Agnifilio reminds me that I would say at
20 least 50 percent of the jurors yesterday were excused because
21 of vacation plans or work issues that had nothing to do with
22 juror bias.

23 So, you know, at the end of the day, we're not only
24 getting bad publicity, we're getting inaccurate publicity.

25 THE COURT: Well, let me just be clear.

1 From what I understand the defense argument to be,
2 it is that the reports have cast really some doubt on those
3 jurors who we did find were at least qualified to continue
4 with voir dire by press reports that swept with a broad brush
5 and indicated that nobody could commit to being fair. That is
6 not obviously accurate and it is not the Court's place
7 certainly to tell reporters what they can report.

8 So the record is clear, we examined 180 prospective
9 jurors. Of those jurors, a vast majority were excused because
10 of vacations, medical issues or family concerns that would
11 preclude them from being able to serve and, yes, there were
12 certainly jurors who had strong views of Mr. Shkreli based on
13 past media reports and, in some cases, personal experience.
14 We had one juror who blogged with or whatever you call it,
15 exchanged on the internet some conversations. But I think
16 that the concern is that those jurors who were selected should
17 not be characterized as being potentially unfair and when we
18 see headlines, despite my admonishments to jurors not to read
19 or to look at anything related to this case, the concern is
20 that we need to probe very carefully additional jurors who are
21 coming in today to make sure that they have not been
22 influenced in a negative way for or against either party.

23 In any event, Ms. Bolger, if you wanted to respond
24 to Mr. Brafman, I am happy to hear you.

25 MR. BRAFMAN: Can I just read one paragraph so

1 Ms. Bolger will at least understand?

2 MS. BOLGER: I actually did read the newspaper.

3 MR. BRAFMAN: I know. Excuse me. I want the record
4 to reflect --

5 MS. BOLGER: I know from the newspapers that most of
6 the jurors were dismissed because of vacation plans because I
7 read it, I read it in the newspaper.

8 MR. BRAFMAN: Well, maybe you read this too then. I
9 want to read this into the record, if you please.

10 "Forget about twelve angry men. Prosecutors and
11 defense lawyers went through 134 potential jurors Monday and
12 couldn't find a single one to sit in judgment of reviled drug
13 price gouger Martin Shkreli, with many calling him a snake,
14 evil and a dick." Pardon the language, but I'm reading from
15 the newspaper.

16 So I think, Judge, quite frankly, this panel,
17 wherever they are, in the room, in the jury room, has been
18 unfairly tainted and I think the only remedy is we start again
19 in a couple of weeks with different rules and the motion for
20 the mistrial is renewed.

21 I understand you have clients, Ms. Bolger. I
22 respect that, but I have someone who's facing 20 years in
23 prison.

24 MS. BOLGER: Your Honor, I obviously don't have any
25 opinion on the mistrial not knowing what's happening in the

1 room and won't opine on it.

2 I will say that Mr. Brafman's distinction obviously
3 with respect that I don't know anything about nothing
4 underscores one point. This is about publicity. That's the
5 word Mr. Brafman used. This is about publicity and you have
6 to do more than say there's bad stuff out there to kick the
7 press out and I honestly think, Your Honor, that extensive
8 voir dire can fix the problem.

9 You can ask the jurors today if they read an article
10 in the New York Post. That will fix the problem that
11 Mr. Brafman has identified. The only difference between last
12 week and this week are the newspaper articles last night and
13 you can ask a juror: Did you read those articles last night?
14 And you can expect them to respond to you with honesty and
15 candor because they're under oath and you're a federal judge
16 and that's pretty amazing and they're going to answer your
17 questions. Then you will have the same goal that Mr. Brafman
18 asked you to do without burdening, and much more effectively,
19 by the way, without burdening the press corps or the public's
20 right of access. Right?

21 The alternative is you shut everybody out and
22 everybody -- and some people in Brooklyn still don't like
23 Mr. Shkreli and some people in Brooklyn do like Mr. Shkreli.
24 Right? Shutting everybody out doesn't obtain the goal that
25 Mr. Brafman wants. Asking the question, Did you read the

1 paper, does.

2 MR. BRAFMAN: I don't want to repeat myself, Judge.

3 THE COURT: All right. Well, what I am proposing to
4 do is to allow further examination of those jurors, the 47
5 that were set aside last evening who indicated that they could
6 be fair and impartial.

7 We will explore whether they were exposed to any
8 media reports despite my admonishment and I believe they would
9 have followed my directions not to read reports. So, even if
10 they might have seen the headline which we don't know but
11 assuming they did see headlines, they were directed not to
12 read those reports. The bottom line that we all need to
13 explore is whether or not Mr. Shkreli's right to a fair trial
14 would be impaired by a juror having a view, a negative view or
15 biased view against him as a result of what was reported
16 yesterday.

17 I think that the only way for me to make findings,
18 that is, whether or not the presence of a pool reporter and
19 reporting of what jurors in this District have said with
20 regard to any negative comments would be to have closed
21 questioning and to examine whether any exposure might have
22 influenced their ability to be fair and impartial.

23 I will certainly explore that with the next group of
24 60. This is a group of 60 additional jurors who are waiting
25 and ready to begin voir dire, but I do believe that it would

1 be important, before I make findings, to find out from those
2 jurors themselves whether or not this recent press regarding
3 jurors had any adverse impact.

4 So, I will certainly consider your motion you made,
5 Mr. Brafman, respectfully denying your motion for a mistrial
6 and I am also denying a motion to start over fresh with new
7 jurors at this time. I think that in order to, as I said,
8 find out what the impact has been, we would need to do
9 additional voir dire of jurors.

10 MR. BRAFMAN: Yes, Your Honor. Thank you.

11 THE COURT: All right. Thank you.

12 MR. BRAFMAN: Thank you for hearing me.

13 THE COURT: Thank you.

14 MS. BOLGER: Thank you, Your Honor, for calling me.

15 THE COURT: Thank you for being available.

16 Ma'am, is this the best number to reach you at, this
17 number we called you?

18 MS. BOLGER: Yes. This is my cell phone number.

19 THE COURT: It won't be published but we will
20 certainly keep it.

21 MS. BOLGER: Understood. Thanks very much.

22 THE COURT: All right. Are we ready to bring the
23 jurors in?

24 MS. KASULIS: Yes, Your Honor.

25 (Pause.)

1 THE COURT: Good morning, ladies and gentlemen. I
2 am Judge Kiyo Matsumoto. I would like to introduce you to my
3 case manager, Ms. Sandra Jackson, and my law clerks, Vivek
4 Tata and Alanna Newman who are standing in the back.

5 Can everybody hear me? If not, please raise your
6 hand.

7 I would like to ask you to please pay attention as I
8 go through these instructions and please do not speak with
9 anyone about this case, including your family members,
10 friends, and please don't let anyone approach you about this
11 case.

12 You are here today because we are about to select a
13 jury to hear a criminal case. The trial is expected to begin
14 later today or tomorrow morning and is expected to last at the
15 outside up to six weeks. We will not hold trial on Monday,
16 July 3rd or Tuesday, July 4th. Fortunately, this particular
17 trial promises to be an interesting and educational experience
18 for those selected to serve as jurors.

19 This is a criminal case commenced by the United
20 States which is frequently referred to as "the Government."
21 Representing the United States are Assistant United States
22 Attorneys Jacquelyn Kasulis, Alixandra Smith and G. Karthik
23 Srinivasan. Also seated at the government's table are
24 Special Agent Michael Braconi and Special Agent Sean Sweeney
25 from the Federal Bureau of Investigation and paralegal

1 specialist Gabriela Balbin.

2 The defendant in this case is Mr. Martin Shkreli.
3 He is represented by the attorneys Benjamin Brafman, Marc
4 Agnifilo, Andrea Zellan, Jacob Kaplan and Teny Geragos. She
5 will be joining us later.

6 Now, the fact that this is a prosecution brought in
7 the name of the United States does not entitle the Government
8 to any greater consideration than any other party who appears
9 in court. All parties, the Government and individuals, are
10 entitled to equal treatment in court and under the law. They
11 are all entitled to your equal consideration. No party is
12 entitled to sympathy or favor.

13 The purpose of jury selection is to ensure fairness
14 and impartiality to all parties in this case. The way we try
15 to be sure a jury will be fair and impartial is by going
16 through a process called voir dire. Basically, I will be
17 asking you questions both as a group and individually about
18 your background and your views on certain subjects. It is not
19 my intention to invade your privacy, but simply try to ensure
20 that you can sit fairly and impartially in this particular
21 case.

22 At times, this will be tedious and I ask you please
23 to bear with me.

24 If in the course of this questioning process you
25 think that because of some experience you have had in your

1 life or because of something you have heard or read that you
2 could not be fair and impartial, that is, that you would be
3 inclined toward the Government or the defendant regardless of
4 what the evidence showed, it is your duty to tell me that.
5 That is because the Government and the defendant have a right
6 to a qualified impartial jury, one that will decide this case
7 without fear, favor, prejudice or passion, and will render a
8 verdict based solely on the evidence presented at the trial
9 and on the law as I will instruct you.

10 Now, quite apart from whether or not I must excuse
11 you, the lawyers for both sides would be entitled to a certain
12 number of peremptory challenges which means they may excuse a
13 certain number of jurors without giving any reason. If you
14 are excused, no personal affront is intended.

15 It is important for all of you to listen carefully
16 to the questions that I must ask you because your answers to
17 my questions will be under oath. I will now ask Ms. Jackson
18 to administer the oath to you.

19 Please raise your right hands.

20 (Prospective jurors sworn.)

21 THE COURT: Thank you.

22 This criminal case comes before the Court by way of
23 the indictment. The indictment is captioned United States of
24 America against Martin Shkreli. The indictment is simply a
25 document that the Government uses to state charges against a

1 defendant. It serves no other purpose and it is not evidence.

2 I am going to summarize the charges in the
3 indictment so you can understand what this case is about but,
4 again, remember, that any evidence pertaining to the charges
5 in the indictment will come before you only when we begin the
6 actual trial.

7 In summary, the indictment charges that the
8 defendant Martin Shkreli is charged with eight counts
9 including various acts of securities fraud, conspiracy to
10 commit securities fraud and conspiracy to commit wire fraud.

11 Counts One through Three charge Mr. Shkreli with
12 conspiracy to commit securities fraud, conspiracy to commit
13 wire fraud and a substantive count of securities fraud in
14 relation to an entity known as MSMB Capital.

15 In Counts Four through Six, Mr. Shkreli is charged
16 with conspiracy to commit securities fraud, conspiracy to
17 commit wire fraud and a substantive count of securities fraud
18 in relation to an entity known as MSMB Healthcare.

19 In Counts Seven and Eight, Mr. Shkreli is charged
20 with conspiracy to commit securities fraud and conspiracy to
21 commit wire fraud in relation to an entity known as Retrophin.

22 Now, Mr. Shkreli has pleaded not guilty to all of
23 the charges in the indictment and has thus raised issues of
24 fact to be determined by a jury. Let me now advise you that
25 it is the Government that has the burden of proof in any

1 criminal case to establish a defendant's guilt beyond a
2 reasonable doubt as to each element of each charged offense.

3 The defendant is always presumed to be innocent. In
4 that regard, the defendant has no burden to present any
5 evidence or to testify. Because the United States
6 constitution protects a defendant's right to remain silent,
7 the law prohibits you from considering when you deliberate
8 that the defendant may not have testified. This is a basic
9 principle of our criminal justice system.

10 The role of the jury in a criminal case is to hear
11 the evidence and decide the facts, that is, to decide what
12 happened. The judge does not have any role to play in your
13 determination of the facts. As the judge, my role is to
14 instruct you on the applicable law. You will apply the facts
15 as you find them to the law as I instruct you and your
16 consideration and conclusion will be your verdict. You must
17 apply the law as stated by me regardless of any opinion you
18 may have as to what the law is or should be. If any of you
19 would have difficulty doing this, I must ask you to bring that
20 to my attention.

21 Now, what we are going to do is to start asking
22 questions of the jurors. I would ask that if hands are raised
23 in relation to my questions, that we address that generally in
24 the courtroom or at side bar which is just an area to my right
25 where you can answer questions outside the presence of the

1 hearing of your fellow jurors.

2 It is important for all of you to listen carefully
3 to the questions that I will be asking and to make note of
4 your answer if your answers to any of my questions would be
5 "yes." That is because if the jurors whose numbers are going
6 to be examined at this time will be excused and you may be
7 called upon to replace that juror. If that happens, I will
8 not repeat all of the questions I have asked. I will simply
9 ask you whether any of your answers to my questions thus far
10 would have been "yes." It is very important, therefore, that
11 you all listen carefully to my questions and consistent with
12 the oath that you have taken, answer as honestly, truthfully,
13 conscientiously and candidly as you can.

14 When I ask you a question and your answer to my
15 question would be yes, please raise your hand. For some
16 questions, I may ask you to answer from where you are seated.
17 For questions of a personal or private nature, I may ask you
18 if you are comfortable answering from your seat but more
19 likely, I will ask you to come to side bar and have you answer
20 those questions at side bar.

21 In addition, it is very important for you to be
22 candid about your ability to decide this case fairly and I may
23 ask you to come to side bar to answer those questions and to
24 make sure that you feel comfortable fully disclosing your
25 views about issues. Your answers at side bar will not be

1 heard by the other jurors or other members in the courtroom.
2 Necessary court personnel will be present, but I will also
3 advise you that because judicial proceedings are open and
4 public, one press reporter will be present at side bar.

5 If I ask you to come to side bar to discuss your
6 answer further, I will not ask your name. I will refer to you
7 only by number so that your answers will not be associated
8 with your name. It is critical to the parties' right to a
9 fair trial that all jurors be candid and truthful in answering
10 my questions. If there are any issues that you do not feel
11 comfortable discussing in the presence of a press reporter,
12 please let me know and I will ask the reporter to step back.

13 Is there anyone who either did not understand what I
14 have said or who cannot accept the principles of law that I
15 have explained thus far? If so, please raise your hand.

16 Is there anyone who has heard anything about this
17 case before today?

18 Now, I must advise you that cases do receive media
19 attention from time to time and it is not wrong, if you have
20 been exposed to media attention, that you have formulated an
21 opinion. The critical issue for all of us is whether your
22 opinion will interfere with your ability to be fair and
23 impartial to both sides and to decide this case based only on
24 the evidence presented at the trial and to apply the
25 instructions of law that I will provide.

1 Has anyone heard anything about this case and formed
2 an opinion about the case that will affect your ability to be
3 fair and impartial?

4 All right. Before we do that, let me ask this
5 question instead because this might address something.

6 Knowing the trial is scheduled to begin immediately
7 after jury selection and last approximately six weeks, is
8 there anyone who would find it extremely burdensome to serve
9 on this jury?

10 I recognize -- wait a minute. Please listen. I
11 recognize that jury service will be inconvenient for some, if
12 not all of you, but you must recognize that your duties as
13 citizens of this country is to serve as jurors when called.
14 You must ask yourself when you raise your hand whether serving
15 on this jury will be so much more inconvenient or burdensome
16 for you than it would be for anyone else. You should also ask
17 yourself what attitude you would want a juror to have if you
18 or someone you care deeply about were to be tried by a jury.
19 As you know, the right to a jury trial is a fundamental
20 constitutional right and you should bear in mind the many
21 sacrifices that were made throughout our country's history to
22 preserve and defend the right to a jury trial in our
23 constitution.

24 Now, let me ask you is there anyone who would find
25 jury service for six weeks to be unduly burdensome? If so, I

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1 will hear from you at side bar.

2 All right. Let's start with Juror Number 1.

3 (The following occurred at side bar; prospective
4 juror joins.)

5 THE COURT: Yes, ma'am.

6 THE PROSPECTIVE JUROR: I have a special program
7 that I have to be in July 10th to the 14th and I'm also an
8 economist so I'm kind of biased.

9 THE COURT: Well, economist aren't per se biased.

10 THE PROSPECTIVE JUROR: Well, in my --

11 THE COURT: Economists serve on jury duty.

12 THE PROSPECTIVE JUROR: I understand that but I
13 don't mean that. I mean my personal opinions have already
14 been formed and I'm biased and what really concerns me is I
15 have to go through a program because I'm working for an
16 opportunity on July 10th through 14th.

17 THE COURT: This is, as you said, not something that
18 you can change?

19 THE PROSPECTIVE JUROR: Right.

20 THE COURT: What kind of program is it?

21 THE PROSPECTIVE JUROR: I have the paper if you
22 would like to see it.

23 THE COURT: You can describe it for me.

24 THE PROSPECTIVE JUROR: It's a teaching program for
25 financial literacy and I have to get certification so I will

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1 not have another opportunity to take certification.

2 THE COURT: Okay. Thank you. Let me ask you to
3 step in back of this gentleman here for one moment.

4 (Prospective juror leaves side bar.)

5 MR. BRAFMAN: No objection.

6 MS. KASULIS: No objection.

7 (Prospective juror joins side bar.)

8 THE COURT: Ma'am, we are going to excuse you and
9 ask you to go back to the jury room and tell them you have
10 been excused. Okay?

11 THE PROSPECTIVE JUROR: Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Juror Number 2, did you have your hand
15 up? Come up, sir.

16 (Side bar continues; prospective juror joins.)

17 THE COURT: Yes, sir. You are Juror Number 2?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: What can you tell us?

20 THE PROSPECTIVE JUROR: My age. I'm 65 and I'm on
21 Zoloft. I don't think I can handle the length and the anxiety
22 of it. I should have brought my doctor's note. I apologize.

23 THE COURT: All right. So, sitting on a jury would
24 make you feel anxious even with medication?

25 THE PROSPECTIVE JUROR: Yes.

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1 THE COURT: So you would have a difficult time
2 concentrating?

3 THE PROSPECTIVE JUROR: Especially for the length of
4 it.

5 THE COURT: All right. I will excuse you, sir. Go
6 to the jury room down on the second floor and tell them you
7 have been excused.

8 THE PROSPECTIVE JUROR: I've been excused? Okay.
9 Thank you.

10 THE COURT: Thank you.

11 (Prospective juror excused.)

12 (In open court.)

13 THE COURT: Who else in the first row had their hand
14 up? Juror Number 3, come on up.

15 (Side bar continues; prospective juror joins.)

16 THE COURT: Yes, ma'am. You are Juror Number 3.

17 THE PROSPECTIVE JUROR: I'm a pre-school teacher and
18 I have an arrangement with the family of a child to be the
19 child's caregiver over the summer and it's been made way in
20 advance and they're depending on me for the care of the child.
21 So, I didn't, I didn't know that it would take this long and
22 then I have to back out and I'm stuck, no child care for the
23 child, and I don't want to do that with the family.

24 THE COURT: When were you supposed to start the
25 child care?

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1 THE PROSPECTIVE JUROR: July 17th. So, in the event
2 the trial is not over by then --

3 THE COURT: Is there a way to push back your start
4 date with this family for about three and a half weeks and
5 start in August?

6 THE PROSPECTIVE JUROR: They have no one available.
7 You know, I don't know with short notice if they could find
8 someone to replace me and I really don't want to inconvenience
9 them.

10 THE COURT: Right.

11 THE PROSPECTIVE JUROR: And be inconsiderate to the
12 family. I hate to stick them with that at the last minute and
13 not have backup.

14 THE COURT: All right. Let me ask you to step back
15 a moment.

16 (Prospective juror leaves side bar.)

17 MR. BRAFMAN: No objection, Judge.

18 THE COURT: Do you have any objection to excuse her?

19 MS. SMITH: No.

20 (Prospective juror joins side bar.)

21 THE COURT: Ma'am?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: We will excuse you. Please go to the
24 second floor and tell them you've been excused.

25 (Prospective juror excused.)

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1 (In open court.)

2 THE COURT: Okay. Did Juror Number 4 have his hand
3 up? Okay. Come up, sir. I'm so sorry.

4 (Side bar continues; prospective juror joins.)

5 THE COURT: Yes, sir.

6 THE PROSPECTIVE JUROR: My main problem is the
7 travel and the other thing is despite having jury duty, I
8 still have to work every night when I go back home. I still
9 have to do my work because I'm a tax associate so I have
10 clients.

11 THE COURT: You're a tax associate?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: That you could work at home?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: How did you come to the courthouse
16 today?

17 THE PROSPECTIVE JUROR: By car.

18 THE COURT: And you live --

19 THE PROSPECTIVE JUROR: -- in Brooklyn.

20 THE COURT: So --

21 THE PROSPECTIVE JUROR: I mean, it's not 100 percent
22 burdensome, but just the fact that I don't know how late I
23 would be working every night and then have to come in the
24 morning.

25 THE COURT: Well, we would probably adjourn each day

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1 by 5:30. Would that be a hardship for you, sir?

2 THE PROSPECTIVE JUROR: No. Like I said, it's just
3 the fact depending on how late I would have to work in the
4 night and then return in the morning.

5 THE COURT: I see. We would want you back --

6 THE PROSPECTIVE JUROR: It's probably doable.

7 THE COURT: And have you heard anything about this
8 case?

9 THE PROSPECTIVE JUROR: I've seen -- I know the case
10 basically, the basics of the case.

11 THE COURT: Well, it's fine if you've seen it, but
12 have you formulated any opinion or feelings?

13 THE PROSPECTIVE JUROR: Not really.

14 THE COURT: All right. Do you believe that you
15 could decide this case fairly and impartially?

16 THE PROSPECTIVE JUROR: Possibly. I don't want to
17 say 100 percent. I can't say 100 percent.

18 THE COURT: Let me explore why you can't say
19 100 percent. I need to hear a juror would be committed to
20 maintain an open and fair state of mind to both sides. Could
21 you do that?

22 THE PROSPECTIVE JUROR: I can do that.

23 THE COURT: And would you commit to deciding this
24 case based only on the evidence in this case without regard to
25 anything you may have read about him in the media?

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1 THE PROSPECTIVE JUROR: It's possible I could, yes.

2 THE COURT: Well, it's possible? Would you be
3 committed to doing that?

4 THE PROSPECTIVE JUROR: I could, yes.

5 THE COURT: Or would you have to --

6 THE PROSPECTIVE JUROR: No, could I do that. I can
7 do that.

8 THE COURT: All right. Well, let me just ask you to
9 step back just a little bit. Sorry.

10 (Prospective juror leaves side bar.)

11 MR. BRAFMAN: Your Honor, could the Court inquire,
12 he said he's read about the basics of the case. That would
13 suggest to me that he thinks what he read what this case is
14 about, just ask him --

15 THE COURT: What he's read?

16 MR. BRAFMAN: What he's read.

17 THE COURT: Okay. Sure.

18 (Prospective juror joins side bar.)

19 THE COURT: Sir?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Can you tell us what you have read or
22 heard about this case?

23 THE PROSPECTIVE JUROR: Well, besides the Ponzi
24 scheme affect, you could say, I believe it's also the increase
25 in the prices for medications is part of the story.

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1 THE COURT: Okay. The increases --

2 THE PROSPECTIVE JUROR: It's not part --

3 THE COURT: -- of the medications, that's not
4 charged at all, but it's possible, it may possibly come up.

5 THE PROSPECTIVE JUROR: Right.

6 THE COURT: Would you, despite what you have read,
7 maintain a fair state of mind to both parties or commit to
8 doing that as you sit as a juror and listen to evidence?

9 THE PROSPECTIVE JUROR: I mean, again, I can say
10 yes. It won't be 100 percent because I hear everything, to be
11 honest.

12 THE COURT: You should keep an open mind and have no
13 opinion until you have heard all the evidence and sent back to
14 deliberate. Could you do that?

15 THE PROSPECTIVE JUROR: I believe I could.

16 THE COURT: Thank you. Let me just ask you to step
17 back one more second. I'm very sorry.

18 THE PROSPECTIVE JUROR: Sure.

19 (Prospective juror leaves side bar.)

20 MR. BRAFMAN: Your Honor, I don't want to invade the
21 juror's privacy to any degree that we don't need to, but the
22 record should reflect that he obviously has some physical
23 ailment. God only knows how much medication he takes and what
24 they cost. To the extent that this case may involve someone
25 who's charged with gouging pharmaceuticals, I would ask Your

CMH

OCR

RMR

CRR

FCRR

Side Bar

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1 Honor to use your discretion to excuse him for cause or to
2 inquire further.

3 THE COURT: All right. Let me inquire.

4 (Prospective juror joins side bar.)

5 THE COURT: Sir? I'm so sorry. I don't mean to
6 touch on a sensitive subject but one question is whether -- it
7 appears that you are using a walker.

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: And with that, are you taking any
10 medication for any particular medical condition?

11 THE PROSPECTIVE JUROR: I am.

12 THE COURT: Does the medication affect your ability
13 to think clearly and to perceive accurately what is going on?

14 THE PROSPECTIVE JUROR: Not that I know.

15 THE COURT: Does it have any side effects?

16 THE PROSPECTIVE JUROR: Besides what happens when my
17 body, muscle spasms and stuff like that. Other than that, no.

18 THE COURT: Would you require any accommodations in
19 terms of your seating or length? We may ask you to sit for
20 several one-and-a-half-hour periods at a time.

21 THE PROSPECTIVE JUROR: Just getting up. I would
22 need to stretch.

23 THE COURT: How often do you have to do that?

24 THE PROSPECTIVE JUROR: Well, when I stretch, it
25 will happen when I'm sitting so I can't, feel like spasms.

CMH

OCR

RMR

CRR

FCRR

Side Bar

347

1 THE COURT: So you have to --

2 THE PROSPECTIVE JUROR: Not that I have to get up,
3 but you know how a cat scratches? Similar to that.

4 THE COURT: All right.

5 THE PROSPECTIVE JUROR: It occurs just naturally.

6 THE COURT: So the medication you're talking
7 maintains your clarity of mind?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. Thank you. One more moment.

10 THE PROSPECTIVE JUROR: Sure.

11 THE COURT: I'm so sorry.

12 (Prospective juror leaves side bar.)

13 THE COURT: I think that his physical ailments are
14 not impacted.

15 MR. BRAFMAN: Respectfully, I'm just concerned that
16 the fact that he is on apparently a lot of medication would
17 make him unfair against Mr. Shkreli who is charged with
18 raising the price of pharmaceuticals. I renew my challenge.

19 THE COURT: I will ask him whether his medication --

20 MS. SMITH: Your Honor, just for the record, I don't
21 think he said he was on lots of medication.

22 THE COURT: No, he didn't say that.

23 MS. KASULIS: Yes.

24 (Prospective juror joins side bar.)

25 THE COURT: We should come to you. I'm so sorry.

1 THE PROSPECTIVE JUROR: That's okay.

2 THE COURT: How many medications are you taking
3 currently?

4 THE PROSPECTIVE JUROR: Two orally and one, I guess,
5 it's cream that I have to rub on.

6 THE COURT: Okay. Would the fact that you are
7 taking medication and what you have read about Mr. Shkreli in
8 terms of pharmaceutical pricing, would that, the reading about
9 that issue, would that that have any effect on your ability to
10 be fair and impartial given that you are taking medications?

11 THE PROSPECTIVE JUROR: I'm not going to lie to you.
12 It may be for the cost of medications, but if it doesn't come
13 up in the case, then it did not matter.

14 THE COURT: What if it did come up in the case?

15 THE PROSPECTIVE JUROR: Then it may. I can't be
16 certain.

17 THE COURT: So that might affect your ability to be
18 fair to Mr. Shkreli?

19 THE PROSPECTIVE JUROR: It may because of the fact
20 that I have to pay for medication.

21 THE COURT: So I am going to just speak one more
22 time with the lawyers.

23 THE PROSPECTIVE JUROR: Sure.

24 THE COURT: I'm so sorry.

25 THE PROSPECTIVE JUROR: No problem.

Side Bar

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1 (Prospective juror leaves side bar.)

2 THE COURT: I am going to grant his motion to excuse
3 this juror. Okay?

4 MS. KASULIS: Your Honor, but just to be clear, I
5 think a lot of people are going to be on medication. I don't
6 think that that should be a basis to strike anybody because
7 there may be some talk about a drug pricing increase, so I
8 think if we're going to go down that, it's going to be
9 problematic from our perspective.

10 MR. BRAFMAN: I don't intend to address it with
11 every juror. There are some obvious issues here. That's the
12 only reason why I pressed it.

13 (Prospective juror joins side bar.)

14 THE COURT: All right. I am going to excuse you,
15 Juror Number 4, and ask that you go down to the jury room.
16 Thank you, sir.

17 (Continued on next page.)

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CMH

OCR

RMR

CRR

FCRR

Sidebar

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1 (Continuing)

2 THE COURT: Did Juror No. 5 have his hand up? Come
3 up, sir?

4 (Sidebar continues; prospective juror joins.)

5 THE COURT: Sir, yes, you said that this six-week
6 trial may have an impact?

7 THE PROSPECTIVE JUROR: Yes. I have a job,
8 mortgage, and I'm also caring for my mother who is undergoing
9 treatment for breast cancer.

10 THE COURT: So your job is?

11 THE PROSPECTIVE JUROR: Mechanic for Children
12 Services.

13 THE COURT: And you're there every --

14 THE PROSPECTIVE JUROR: Every day.

15 THE COURT: -- nine to five?

16 THE PROSPECTIVE JUROR: 7 to 3:30.

17 THE COURT: Does your job pay you while on jury
18 duty?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: The care for your mother, when does that
21 start?

22 THE PROSPECTIVE JUROR: I'm in the middle of it now.
23 She is going for radiation now.

24 THE COURT: Is that --

25 THE PROSPECTIVE JUROR: Every day.

Sidebar

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1 THE COURT: It's ongoing now.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: I'll excuse you, sir.

4 THE PROSPECTIVE JUROR: Thank you.

5 THE COURT: Go to the second floor and tell them
6 you've been excused.

7 MR. BRAFMAN: No objection.

8 THE COURT: No objection?

9 MS. KASULIS: No.

10 (Prospective juror excused.)

11 (In open court.)

12 THE COURT: Juror 6, did you have your hand up?

13 (Sidebar continues; prospective juror joins.)

14 THE PROSPECTIVE JUROR: I won't be here in six
15 weeks, I'll be visiting family.

16 And I work on a commission base at work. I'm this
17 close to reaching my goal at work. I'm, like, \$5000 short by
18 the end of this month. If I don't make it, I don't know what
19 to tell you. My job is important to me. I'm this close.

20 And in six weeks, I won't even be here. I'm
21 visiting family overseas.

22 THE COURT: You'll be away.

23 THE PROSPECTIVE JUROR: Yes. And I have to make my
24 goal at work. I have a target. Six weeks is long.

25 THE COURT: We'll excuse you.

Sidebar

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1 THE PROSPECTIVE JUROR: Sorry.

2 THE COURT: Go to the second floor and tell them
3 you're excused.

4 (Prospective juror excused.)

5 THE COURT: No objection to excusing Juror 6?

6 MR. BRAFMAN: No objection.

7 MS. KASULIS: No objection.

8 (In open court.)

9 THE COURT: Juror No. 7, did you have your hand up?
10 Very good. Thank you, sir.

11 How about Juror No. 8? Come on up, ma'am.

12 (Sidebar continues; prospective juror joins.)

13 THE COURT: Yes, ma'am.

14 THE PROSPECTIVE JUROR: Four years ago, I had my
15 left total knee done with knee replacement. Eight months ago,
16 I had this one done. I cannot sit for long. If I sit for
17 hour and a half, I cannot move. A lot. You can see it --

18 THE COURT: We believe you, ma'am.

19 THE PROSPECTIVE JUROR: I have the card, both knees
20 done.

21 THE COURT: We wouldn't want you to be
22 uncomfortable. So, you can't sit for more than an hour and a
23 half.

24 If we give ten-minute breaks every hour and a half,
25 would that be --

Sidebar

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1 THE PROSPECTIVE JUROR: It's very tough. My surgeon
2 said to me it will take a good year to feel comfortable. I'm
3 bilateral now, with both knees.

4 THE COURT: Good luck. We'll excuse Juror No. 8.

5 THE PROSPECTIVE JUROR: Thank you.

6 (Prospective juror excused.)

7 THE COURT: I take it no objection.

8 MR. BRAFMAN: No objection.

9 MS. KASULIS: No objection.

10 (In open court.)

11 THE COURT: Did Juror No. 9 have his hand up? Come
12 up on, sir.

13 (Sidebar continues; prospective juror joins.)

14 THE COURT: Yes, sir.

15 THE PROSPECTIVE JUROR: I have medical appointments
16 when I initially had which I canceled and rescheduled. But
17 the rescheduled appointments run into this extended timeline
18 that you have, which is longer than what's listed in the book.

19 Considering how long it took me to get these
20 appointments to begin with and the problem I had with
21 rescheduling, I'd rather not give them up again.

22 THE COURT: I understand. They're all sometime
23 between now and August?

24 THE PROSPECTIVE JUROR: Yes, 4th.

25 THE COURT: I'll excuse you, sir. Please go to the

Sidebar

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1 second floor.

2 (Prospective juror excused.)

3 THE COURT: Any objection to excusing Juror No. 9.

4 MS. KASULIS: No, your Honor.

5 But with respect to the medical appointments, can we
6 request if there's some sort of medical necessity? If
7 everyone says I have a doctor's appointment, we're not going
8 to be able to get a jury.

9 THE COURT: He had rescheduled with some effort.

10 MS. KASULIS: That's why we didn't object to this
11 one. But just in terms of the doctor's appointments, it would
12 be helpful.

13 THE COURT: Okay.

14 MS. KASULIS: Thank you, Judge.

15 (In open court.)

16 THE COURT: Did Juror No. 10 have your hand up?
17 Come on up.

18 (Sidebar continues; prospective juror joins.)

19 THE COURT: Hello, sir, come on up. Yes.

20 THE PROSPECTIVE JUROR: It's hard for me to come
21 because I work a lot, family, school.

22 THE COURT: Where do you work?

23 THE PROSPECTIVE JUROR: Madison Security.

24 THE COURT: You're a security guard?

25 THE PROSPECTIVE JUROR: Yes.

Sidebar

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1 THE COURT: How often do you work there?

2 THE PROSPECTIVE JUROR: I work five to six days.

3 And it's hard, I'm just getting off work.

4 THE COURT: You're getting off work now?

5 THE PROSPECTIVE JUROR: Yes. I'm a really busy
6 type, busy person.

7 THE COURT: You work at night?

8 THE PROSPECTIVE JUROR: Yeah.

9 THE COURT: And you said there's some other you're
10 in school also; did you say that?

11 THE PROSPECTIVE JUROR: I have a kid I have to
12 sometimes pick up or take to school.

13 THE COURT: How often do you -- school is almost
14 out, but how often do you take the child to school?

15 THE PROSPECTIVE JUROR: Most of the time.

16 THE COURT: The school is almost out. Are they in
17 public school or private day care?

18 THE PROSPECTIVE JUROR: Private school.

19 THE COURT: Does that go all year-round or are they
20 out for summer?

21 THE PROSPECTIVE JUROR: She is out for rest of the
22 summer now.

23 THE COURT: So picking up from school is no longer
24 an issue at present time; is that correct?

25 THE PROSPECTIVE JUROR: Yes.

Sidebar

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1 THE COURT: So tell me your regular work hours,
2 please.

3 THE PROSPECTIVE JUROR: I usually work 12 to 8.

4 THE COURT: 12 a.m. to 8 a.m. or 12 p.m. to 8 p.m.?

5 THE PROSPECTIVE JUROR: 12 to 8 a.m. Sometimes I do
6 8 to 4.

7 THE COURT: I see. So you work through the night.

8 THE PROSPECTIVE JUROR: Yeah.

9 THE COURT: Let me just ask you to step back a few
10 feet over here, please.

11 (Prospective juror leaves sidebar.)

12 THE COURT: He's going to be tired.

13 MR. BRAFMAN: I think he's going to be sleeping.

14 MS. KASULIS: No objection.

15 (Prospective juror joins sidebar.)

16 THE COURT: You're excused. Please return to the
17 second floor and tell them that you are excused.

18 THE PROSPECTIVE JUROR: Second floor?

19 THE COURT: Where you started on the second floor,
20 go back there and tell them you're excused.

21 THE PROSPECTIVE JUROR: Thank you.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Any other -- okay, Juror No. 11.

25 (Sidebar continues; prospective juror joins.)

Sidebar

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1 THE COURT: Hi. How are you? This is Juror No. 11.

2 THE PROSPECTIVE JUROR: The only thing I have going
3 on is ten-day vacation planned in July. That's all I have.

4 THE COURT: Is it booked?

5 THE PROSPECTIVE JUROR: Yes, July 12 through 21.

6 THE COURT: That's too bad.

7 THE PROSPECTIVE JUROR: I'm sorry.

8 THE COURT: That's all right. That can't be
9 changed?

10 THE PROSPECTIVE JUROR: No. This has been booked
11 from, like, two months ago.

12 THE COURT: All right. Thank you. We will excuse
13 you, ma'am. Go to the second floor and tell them you've been
14 excused.

15 (Prospective juror excused.)

16 THE COURT: Juror No. 11 is excused. Is there any
17 objection?

18 MR. BRAFMAN: No, your Honor.

19 MS. KASULIS: No objection.

20 THE COURT: Maybe I should ask you first but can
21 we've --

22 MR. BRAFMAN: If I would object, I'll let your Honor
23 know so that you don't excuse them before I get to say it.

24 THE COURT: I would also ask that, yes, please stop
25 me if you have any disagreement. But I think that given our

Sidebar

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1 history of jury selection when something like that comes up --

2 MR. BRAFMAN: Understood.

3 THE COURT: -- the parties seem to be in agreement.

4 (In open court.)

5 THE COURT: Did Juror 12 have her hand up? Come up,
6 please, ma'am.

7 (Sidebar continues; prospective juror joins.)

8 THE COURT: Hello. Come up so everyone can hear
9 you.

10 THE PROSPECTIVE JUROR: I do not know about this
11 case, but I am a victim of credit card fraud. Somebody use my
12 information, which make me go through a lot of changes. They
13 use my credit, my Social Security, everything. The difference
14 is the e-mail. They apply on that, the card give the credit
15 of 15,000, and it came to me. I called them. So, I put what
16 I lost on my credit information.

17 And that make me not judge the case.

18 THE COURT: It made you not feel comfortable?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Are you telling us that because you were
21 a victim of credit card fraud, would you be able to put that
22 experience out of your mind and to listen carefully to the
23 evidence in this case?

24 THE PROSPECTIVE JUROR: No, because it just happen.

25 THE COURT: All right. Thank you. Let me just ask

Sidebar

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1 you to step back for one moment.

2 (Prospective juror leaves sidebar.)

3 MR. BRAFMAN: No objection.

4 MS. KASULIS: No objection.

5 (Prospective juror joins sidebar.)

6 THE COURT: Ma'am, we will excuse you. You should
7 go back to the second floor and tell them you've been excused.

8 (Prospective juror excused.)

9 THE COURT: Juror 12 is excused on consent.

10 (In open court.)

11 THE COURT: No. 13, come on up, ma'am.

12 (Sidebar continues; prospective juror joins.)

13 THE COURT: Hi. Juror No. 13, what can you tell us?

14 THE PROSPECTIVE JUROR: I can tell you that I'm
15 going on vacation next week. I'm flying. I have three jobs.

16 On July 17, that Monday morning, I'm performing as
17 part of a dance company. And we only have one more rehearsal,
18 so I don't have time to hire, cavity, and then teach that
19 part.

20 And my other job is I run dance camps during the
21 summer and I have five weeks of dance camps starting July 24.
22 That would be a financial burden that I would miss out on that
23 I'm paying for my wedding with.

24 THE COURT: Let me ask you to step back for one
25 moment.

Sidebar

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1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: No objection.

3 MS. KASULIS: No objection.

4 THE COURT: We will excuse Juror 13 without
5 objection.

6 (Prospective juror joins sidebar.)

7 THE COURT: You're excused. You can step down to
8 the second floor and tell them you've been excused.

9 (Prospective juror excused.)

10 THE COURT: Juror No. 14? Okay.

11 Juror 15, come up, please.

12 (Sidebar continues; prospective juror joins.)

13 THE COURT: This is Juror No. 15. Do you have some
14 conflicts with your scheduling?

15 THE PROSPECTIVE JUROR: I'll be out of the country
16 from the 27th of July until the 22nd of August, in Italy, with
17 my family. My husband's family is from Italy and we've
18 arranged for my daughter to study there. We're picking her
19 up. And I have to send my son to study abroad in Argentina
20 from there at the end of that trip.

21 THE COURT: So starting --

22 THE PROSPECTIVE JUROR: We have family obligations
23 in Italy as well because my husband is from there.

24 THE COURT: So starting July 22 you'll be out of the
25 country?

Sidebar

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1 THE PROSPECTIVE JUROR: July 27 to August 22.

2 THE COURT: I wouldn't want to promise that we could
3 finish by that date, so we will excuse you, all right? Please
4 go to the second floor, tell them you've been excused.

5 THE PROSPECTIVE JUROR: Thank you very much.

6 (Prospective juror excused.)

7 THE COURT: I take it no objections to excusing
8 Juror 15.

9 MS. KASULIS: No objection.

10 MR. BRAFMAN: No, your Honor.

11 (In open court.)

12 THE COURT: Juror 16, come on up.

13 (Sidebar continues; prospective juror joins.)

14 THE PROSPECTIVE JUROR: Good morning.

15 THE COURT: This is Juror No. 16.

16 THE PROSPECTIVE JUROR: Is the press here?

17 THE COURT: Yes. Do you need to speak to us
18 without --

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Can you give us the nature? Is it a
21 private issue?

22 THE PROSPECTIVE JUROR: I just don't want them
23 around.

24 THE COURT: All right. She's stepped aside.

25 THE PROSPECTIVE JUROR: I'm 67, I got mechanical

Sidebar

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1 valve, I have three false ribs. I already canceled two
2 doctor's appointments this week. I can't afford six weeks.

3 And to be quite honest with you, and this is the
4 truth --

5 THE COURT: We want the truth.

6 THE PROSPECTIVE JUROR: -- for me to sit here for
7 six weeks and all I see in front of me is \$40 that I'm making?
8 This case is too big for me to be making \$40.

9 But I have the doctor's appointments that I have.

10 THE COURT: Are you otherwise working, sir?

11 THE PROSPECTIVE JUROR: I'm retired.

12 THE COURT: We'll given your medical issues that
13 you've brought to our attention, we'll excuse you. Please go
14 to the second floor and tell them you're excused.

15 THE PROSPECTIVE JUROR: Thank you very much.

16 (Prospective juror excused.)

17 THE COURT: No objection, correct?

18 MS. KASULIS: No.

19 MR. BRAFMAN: No.

20 THE COURT: No. 16 is excused.

21 (In open court.)

22 THE COURT: Juror 17, come on up, sir.

23 (Sidebar continues; prospective juror joins.)

24 THE COURT: Juror 17, yes, sir?

25 THE PROSPECTIVE JUROR: I have teaching obligations.

Sidebar

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1 I'm fine this week and next week. But when I put in for my
2 postponement, I was given times that I could not serve. I
3 would love to serve, but I can't.

4 THE COURT: You start teaching again in the summer?

5 THE PROSPECTIVE JUROR: No. This is a trial
6 advocacy program for Corp. Counsel attorneys at Fordham Law
7 School twice a year. I'm teaching three days on the week of
8 the 10th and two days the following week.

9 THE COURT: All right. And that's during the day,
10 right?

11 THE PROSPECTIVE JUROR: That's correct.

12 THE COURT: All right, sir, I think we'll excuse you
13 under those circumstances.

14 Juror No. 17 is excused.

15 You can go to the second floor and tell them you've
16 been excused.

17 (Prospective juror excused.)

18 THE COURT: No objections, correct?

19 MR. BRAFMAN: No objections.

20 (In open court.)

21 THE COURT: Juror No. 18, come on up, sir.

22 (Sidebar continues; prospective juror joins.)

23 THE PROSPECTIVE JUROR: Basically, I have two
24 reasons. First reason, which is obviously most important, my
25 father just went into the hospital yesterday down in Florida.

Sidebar

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1 And my mother has dementia. So, I have to go down and take
2 care of them. To commit to four to six weeks is just going to
3 be too many for my family.

4 That's the biggest part. I don't even want to go
5 into the other part.

6 THE COURT: I take it you have no other -- you want
7 to be there.

8 THE PROSPECTIVE JUROR: I do have a brother, but
9 it's too difficult for all of us to manage the estate at this
10 point.

11 THE COURT: All right, sir. We will ask you to step
12 back for one second.

13 (Prospective juror leaves sidebar.)

14 MR. BRAFMAN: No objection.

15 MS. KASULIS: No objection.

16 (Prospective juror joins sidebar.)

17 THE COURT: Juror No. 18, we'll excuse you. Go back
18 to the second floor and tell them you've been excused. Thank
19 you.

20 (Prospective juror excused.)

21 (In open court.)

22 THE COURT: Anyone else have their hand up on the
23 last row?

24 You are juror number 20. Come on up, ma'am.

25 (Sidebar continues; prospective juror joins.)

Sidebar

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1 THE COURT: Hi. Is this you, No. 20?

2 THE PROSPECTIVE JUROR: That's me.

3 My issue is because I'm from the medical field, I
4 think I will be biased if it's concerning about medication,
5 especially if the patient doesn't receive medication and they
6 are not covered by insurance. We are so frustrated by that.
7 Probably I would be bias for this kind of issue.

8 THE COURT: Well, I appreciate you're being candid
9 with us about that. Let me just remind you again, I've read
10 the summary of the charges. The issue of medication pricing
11 is not charged in this case. It may come up.

12 Would you be able to commit to listening with an
13 open mind and an unbiased state of mind to both sides and not
14 make any decisions about the evidence until you're called upon
15 to deliberate?

16 And would you be able to set aside your experience
17 in the medical field and listen and decide this case based
18 only on the evidence at trial?

19 THE PROSPECTIVE JUROR: But it's long.

20 THE COURT: It's six weeks.

21 THE PROSPECTIVE JUROR: I'm leaving in three weeks.

22 THE COURT: You're leaving in three weeks. Where
23 are you going?

24 THE PROSPECTIVE JUROR: I'm going to the
25 Philippines.

Sidebar

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1 THE COURT: We will excuse you under those
2 circumstances. Go back to the second floor and tell them that
3 you're excused.

4 (Prospective juror excused.)

5 (In open court.)

6 THE COURT: Juror 21, no? Thank you, ma'am.

7 All right. Juror 22.

8 (Sidebar continues; prospective juror joins.)

9 THE COURT: How are you?

10 THE PROSPECTIVE JUROR: I'm fine, thank you.

11 I work -- I get paid by the hour. And if I am on
12 this trial, they will have no obligation to hold my job for
13 me.

14 THE COURT: I see. What kind of work do you do?

15 THE PROSPECTIVE JUROR: I'm a draftsman for
16 movies and television.

17 THE COURT: I see.

18 THE PROSPECTIVE JUROR: So, they would have to hire
19 somebody else. I managed to get this week off because it's
20 slow, but it picks back up after the holiday.

21 THE COURT: All right. Let me ask you to step back
22 for a moment.

23 (Prospective juror leaves sidebar.)

24 THE COURT: No objection?

25 MR. BRAFMAN: No.

Sidebar

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1 MS. KASULIS: No objection.

2 (Prospective juror joins sidebar.)

3 THE COURT: Ma'am, you're excused. Please go to the
4 second floor jury room and let them know you've been excused.

5 THE PROSPECTIVE JUROR: Thank you very much.

6 (Prospective juror excused.)

7 (In open court.)

8 THE COURT: Juror 23, please come up.

9 (Sidebar continues; prospective juror joins.)

10 THE COURT: Yes, ma'am, you're Juror 23?

11 THE PROSPECTIVE JUROR: I work for a very, very
12 small organization. We have a major event planned for July 20
13 and 21, about three weeks from now. I've been in charge of
14 this event from the beginning, seven or eight months of my
15 life. I truly do not believe it can be successful without me
16 there.

17 I have a letter from my employer, if you'll
18 entertain it.

19 THE COURT: I believe you, you're under oath. So,
20 you have to be there to plan for the event on July 20?

21 THE PROSPECTIVE JUROR: Yes, and 21st.

22 THE COURT: Step back one second.

23 (Prospective juror leaves sidebar.)

24 MR. BRAFMAN: No objection.

25 MS. KASULIS: No objection.

Sidebar

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1 (Prospective juror joins sidebar.)

2 THE COURT: We'll excuse you. Please go to the
3 second floor and tell them you've been excused.

4 THE PROSPECTIVE JUROR: Thank you.

5 (Prospective juror excused.)

6 (In open court.)

7 THE COURT: No. 24, did you have your hand up? All
8 right. Very good.

9 Juror No. 25, come on up, sir.

10 (Prospective juror joins sidebar.)

11 THE COURT: Hello.

12 THE PROSPECTIVE JUROR: I have a ten-year-old
13 daughter. Me and my wife, we're here, we don't have no
14 family. I work in medical office. My wife has two jobs.
15 Yesterday I was here, she had to take off.

16 So, my daughter finishes school Wednesday, starts
17 summer camp the 24th of July. So, my job is a lot more
18 flexible, I can take her with me at work. My wife's job
19 doesn't permit that.

20 So, we have no babysitter. It's impossible.

21 THE COURT: Okay. All right, sir. We'll excuse
22 you. Go to the second floor where you checked in.

23 Juror No. 25 is excused with no objections from the
24 parties. Thank you.

25 (Prospective juror excused.)

Sidebar

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1 (In open court.)

2 THE COURT: Juror 26, did you have your hand up?

3 THE PROSPECTIVE JUROR: I just have a question.

4 THE COURT: Come on up.

5 (Sidebar continues; prospective juror joins.)

6 THE PROSPECTIVE JUROR: I have a full-time job, so
7 my team is only me and my manager. But I want to know if I
8 need to, like, come in every day.

9 THE COURT: Yes, every day for the next six weeks.

10 THE PROSPECTIVE JUROR: Okay. So, that may be a
11 little bit hard for me because my manager now is on vacation.

12 But, like, how long will be the day?

13 THE COURT: We will ask you to come and be ready to
14 start the jury, sitting in the jury box, at 9:30 every
15 morning -- so arrive by 9:15 at the very latest -- and we'll
16 probably sit until 5 or 5:30.

17 Would that be acceptable to you?

18 THE PROSPECTIVE JUROR: I'm not sure because I
19 didn't ask my manager or my management team. I know it's
20 complication, so I'm not sure.

21 THE COURT: Well, we can make a phone available to
22 you and you can call your office and ask. Would you want to
23 do that?

24 THE PROSPECTIVE JUROR: Yes, but I have to get my
25 phone back.

LAM

OCR

RPR

Sidebar

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1 THE COURT: We can take you to a phone and have you
2 use it. Do you have the phone number with you?

3 THE PROSPECTIVE JUROR: I can use my work e-mail.

4 THE COURT: Why don't you get your phone, step out
5 by the windows, and just make a call and come back and let us
6 know what your boss says.

7 THE PROSPECTIVE JUROR: All right.

8 THE COURT: Juror No. 26 will report back.

9 THE PROSPECTIVE JUROR: If they say no --

10 THE COURT: Come back and tell us it's no.

11 THE PROSPECTIVE JUROR: Thank you.

12 (Prospective juror leaves sidebar.)

13 THE COURT: We have to follow up with some of the
14 jurors from yesterday.

15 (In open court.)

16 THE COURT: Juror 27.

17 (Sidebar continues; prospective juror joins.)

18 THE COURT: Good morning.

19 THE PROSPECTIVE JUROR: I have a vacation planned
20 next week and I'm also self-employed. So, whatever your
21 decision...

22 THE COURT: How long is your vacation?

23 THE PROSPECTIVE JUROR: One week, to Canada.

24 THE COURT: We are going to be sitting next week at
25 the trial.

Sidebar

371

1 THE PROSPECTIVE JUROR: My schedule is leave here
2 Wednesday, I'm driving there, and I'll be back I think it's
3 Tuesday, Monday.

4 THE COURT: Is there any flexibility? Can you
5 postpone your vacation until late August?

6 THE PROSPECTIVE JUROR: I probably can -- well, I
7 can probably try to work around it if I have to.

8 THE COURT: Is this a family gathering?

9 THE PROSPECTIVE JUROR: It has a little bit to the
10 do with it. But if I have to, I'd love to hear the case.

11 THE COURT: You said you're self-employed. Will you
12 be able to continue working at your job after hours or on
13 weekends?

14 THE PROSPECTIVE JUROR: Yes and no. In some case
15 weekends, yes; in some, we work with others.

16 THE COURT: What kind of work do you do?

17 THE PROSPECTIVE JUROR: Handyman.

18 THE COURT: So, conceivably, you could do your job
19 in the evening or on weekend.

20 THE PROSPECTIVE JUROR: If I have to.

21 THE COURT: All right. Well, we would like you to
22 be able to serve, sir, but let me ask you this: Have you read
23 anything in the media about this case that would affect your
24 ability to be fair?

25 THE PROSPECTIVE JUROR: Only what I saw in the paper

Sidebar

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1 today.

2 THE COURT: You read today's paper? Can you tell me
3 what you saw?

4 THE PROSPECTIVE JUROR: I read a little bit about
5 the case based on yesterday's jury.

6 THE COURT: And is there anything that you read
7 about the jury selection that would affect your ability to be
8 fair and impartial to both sides?

9 THE PROSPECTIVE JUROR: It has nothing. I know
10 nothing about this case.

11 THE COURT: The question is whether reading about
12 what other potential jurors might have said, would that have
13 any effect on you?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: All right. Let me ask you to just step
16 back for one minute, sir.

17 (Prospective juror leaves sidebar.)

18 THE COURT: If he can serve, if he's able to serve,
19 it seems that he might be available.

20 MR. BRAFMAN: Okay.

21 THE COURT: If he can adjust his vacation.

22 (Prospective juror joins sidebar.)

23 THE COURT: Sir, we would like not to dismiss you or
24 excuse you. If you can, in fact, change your family vacation
25 and work around the clients' schedule when you do your job, we

Sidebar

373

1 would appreciate it.

2 Could you do that for six weeks, sir?

3 THE PROSPECTIVE JUROR: I will try to work on it.

4 THE COURT: Once we select you, you need to be here.

5 THE PROSPECTIVE JUROR: Once selected, I have no
6 choice.

7 THE COURT: So, now is your chance to tell us if
8 there's any reason why you would not be able to serve.

9 THE PROSPECTIVE JUROR: I'll stay.

10 THE COURT: All right. Thank you, sir. Please have
11 a seat.

12 (Prospective juror leaves sidebar.)

13 (In open court.)

14 THE COURT: Juror 28, did you have your hand up,
15 sir? No.

16 How about Juror 29?

17 (Sidebar continues; prospective juror joins.)

18 THE COURT: Hi, sir. How are you?

19 THE PROSPECTIVE JUROR: Good.

20 If it was two or three weeks, I'd be good. But on I
21 believe the 17th, the week of the 17th, my mom is 81 and my
22 sister usually watches her. And she's not going to be around
23 and I need to be.

24 And on the 22nd, I have a trip to Japan that I've
25 spend a lot of money on.

Sidebar

374

1 THE COURT: I wish I were going. All right.

2 THE PROSPECTIVE JUROR: That's all I've got. But if
3 it was after or before that...

4 THE COURT: We will Excuse Juror No. 29.

5 THE PROSPECTIVE JUROR: Thank you very much.

6 THE COURT: Thank you. Have a nice trip.

7 THE PROSPECTIVE JUROR: You too. Thank you.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Did Juror 30 have his hand up? No? All
11 right, good.

12 Juror 31, did you have your hand up? Come on up.

13 (Sidebar continues; prospective juror joins.)

14 THE COURT: You are Juror No. 31.

15 THE PROSPECTIVE JUROR: Yes ma'am.

16 So, I'm currently taking an online class right now
17 but all the exams are in person. So, I have upcoming exams.
18 I also have a vacation I believe the end of July. I think
19 that's within the six weeks.

20 THE COURT: Yes, it is.

21 I take it there would be no objection among anyone
22 to excuse you, given your schedule, correct?

23 MR. BRAFMAN: That's correct.

24 MS. KASULIS: No objection.

25 THE COURT: Thank you, ma'am. We will excuse Juror

Sidebar

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1 31.

2 (Prospective juror excused.)

3 (In open court.)

4 THE COURT: Yes, sir, come up. This is Juror 27.

5 (Sidebar continues; prospective juror joins.)

6 THE PROSPECTIVE JUROR: Can I have excuse to make a
7 phone call and talk to my wife?

8 THE COURT: Yes.

9 (Prospective juror leaves sidebar.)

10 (In open court.)

11 THE COURT: Did Juror 32 have her hand up? Come up,
12 please.

13 (Sidebar continues; prospective juror joins.)

14 THE PROSPECTIVE JUROR: I have a trip scheduled for
15 the 13th through the 19th.

16 THE COURT: Of July?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: Is there any latitude to change that
19 trip?

20 THE PROSPECTIVE JUROR: No.

21 THE COURT: You have tickets?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Well, we'll excuse you then. So, just
24 go to the second floor --

25 THE PROSPECTIVE JUROR: Thank you so much.

Sidebar

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1 THE COURT: -- tell them you've been excused.

2 THE PROSPECTIVE JUROR: Thank you.

3 (Prospective juror excused.)

4 (In open court.)

5 THE COURT: Juror 33? Okay, very good.

6 What about Juror 34? Come on up, ma'am.

7 (Sidebar continues; prospective juror joins.)

8 THE COURT: Tell us what your conflict is regarding
9 the six-week trial.

10 THE PROSPECTIVE JUROR: I cannot sit down too long.

11 THE COURT: Okay.

12 THE PROSPECTIVE JUROR: I have a back problem and
13 sometimes I lose my memory and I can't speak loud.

14 THE COURT: Are you being treated with medication?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Does the medication affect your ability
17 to think clearly?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. We will excuse Juror No. 34,
20 then.

21 THE PROSPECTIVE JUROR: Thank you.

22 THE COURT: You can go back to the second floor
23 where you checked in and let them know you've been excused.

24 THE PROSPECTIVE JUROR: Thank you.

25 (Prospective juror excused.)

LAM

OCR

RPR

Sidebar

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1 THE COURT: I'll call back Juror 26 and find out her
2 story.

3 (In open court.)

4 THE COURT: Juror 26, please come back for a moment.

5 (Sidebar continues; prospective juror joins.)

6 THE PROSPECTIVE JUROR: I call my boss, so he
7 understand. I think I can stay.

8 THE COURT: You'll be paid?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: And you can work for six weeks nine to
11 five as a juror in this case?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: You can do that?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Have you heard anything in the media
16 that would affect your ability to be fair and impartial to
17 both sides in this case?

18 THE PROSPECTIVE JUROR: No, never heard about this
19 case.

20 THE COURT: Okay. Very good. Please have a seat.
21 Thank you.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Juror No. 35, did you have your hand up?
25 Come up, sir.

Sidebar

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1 (Sidebar continues; prospective juror joins.)

2 THE COURT: How are you?

3 THE PROSPECTIVE JUROR: Since trial may take up to
4 five weeks, I don't think I can serve as a juror. In about
5 four weeks, my mother will be having a hearing with a judge
6 over whether she will be getting SSD or not, and it's her only
7 chance to apply. She can't speak English, even though she's a
8 citizen. I translate between her and her lawyer and between
9 her and the judge. The lawyer doesn't speak Spanish and my
10 mother doesn't speak English and I'm the only persona in the
11 family that can translate between the both of them.

12 THE COURT: This is an administrative judge hearing
13 for Social Security disability?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: And it's scheduled when, sir?

16 THE PROSPECTIVE JUROR: It's in four weeks. I don't
17 know the day --

18 THE COURT: That's okay, it doesn't have to be exact
19 as long as you're sure it falls within the six weeks.

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: All right, sir, we will excuse you.

22 Thank you. Go back to the second floor where you were checked
23 in and let them know.

24 (Prospective juror excused.)

25 THE COURT: No objections to excusing 35?

Sidebar

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1 MR. BRAFMAN: No.

2 MS. KASULIS: No.

3 (In open court.)

4 THE COURT: Did Juror 36 have her hand up? Come on
5 up, ma'am.

6 (Sidebar continues; prospective juror joins.)

7 THE PROSPECTIVE JUROR: I have family obligations as
8 well as work obligations that it's really hard for me to be
9 here. I'm also training someone at the same time.

10 THE COURT: Can you tell us what your work
11 obligations are?

12 THE PROSPECTIVE JUROR: I'm a research scientist at
13 a laboratory.

14 THE COURT: And you have an ongoing research
15 project?

16 THE PROSPECTIVE JUROR: Not a research project. I'm
17 also training and analyzing patient samples at the same time.

18 THE COURT: Patient samples?

19 THE PROSPECTIVE JUROR: Yeah.

20 THE COURT: Is there anyone else at your job who can
21 fill in for you if you were to serve for six weeks?

22 THE PROSPECTIVE JUROR: Six weeks is a long duration
23 of time.

24 THE COURT: I know it is. But is there someone to
25 fill in?

LAM

OCR

RPR

Sidebar

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1 THE PROSPECTIVE JUROR: At this moment, I think
2 there's a lower capability of staff right now. We're trying
3 to hire people into the company at this moment.

4 THE COURT: Tell me about the training that you said
5 you have to conduct.

6 THE PROSPECTIVE JUROR: I'm just training a new
7 hiree that we hired about two months ago. And this is his
8 third training in process.

9 THE COURT: How long is each training process?

10 THE PROSPECTIVE JUROR: It's the whole -- he's
11 shadowing me while doing my work.

12 THE COURT: Is there anyone else he can shadow who
13 is doing comparable work?

14 THE PROSPECTIVE JUROR: No, he's with me only.

15 THE COURT: You work in the evening?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: What are your hours?

18 THE PROSPECTIVE JUROR: 2:30 to 11:30.

19 THE COURT: We would be sitting from -- I would ask
20 you to come at 9:15 and we would dismiss the jury at 5:30.
21 Would that be a possibility?

22 THE PROSPECTIVE JUROR: It's out in Long Island, so
23 when I get out it would probably take me two hours to get
24 there.

25 THE COURT: Would you step back for a minute?

Sidebar

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1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: No objection.

3 MS. SMITH: Is her company going to pay her? I feel
4 like it's one thing if it's economical.

5 (Prospective juror joins sidebar.)

6 THE COURT: Ma'am, does your research lab pay you
7 for jury duty?

8 THE PROSPECTIVE JUROR: I'm not sure. I haven't
9 asked them that.

10 THE COURT: Could you find out from them? I'll ask
11 you to go out in the hallway, retrieve your phone, and ask
12 them whether you will be paid if you were selected for six
13 weeks of jury duty.

14 THE PROSPECTIVE JUROR: Okay.

15 THE COURT: Then come back and we will see.

16 (Prospective juror leaves sidebar.)

17 (In open court.)

18 THE COURT: Come on up, sir.

19 (Sidebar continues; prospective juror joins.)

20 THE COURT: What's your number again, sir?

21 THE PROSPECTIVE JUROR: 27.

22 THE COURT: Juror 27 is back.

23 THE PROSPECTIVE JUROR: Can I be excused? My wife
24 is not too happy.

25 THE COURT: Not even postponing it until August?

Sidebar

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1 THE PROSPECTIVE JUROR: No. She said six weeks, I
2 promised my son vacation, how am I going to tell him?

3 That's my only problem right now. Other than that,
4 I don't have any other problem.

5 THE COURT: How old is your son?

6 THE PROSPECTIVE JUROR: He is 15, going on 16.

7 THE COURT: It's only for six weeks. I shouldn't
8 say "only." It's six weeks.

9 Does your son have summer plans?

10 THE PROSPECTIVE JUROR: No, he has no summer plans.

11 THE COURT: Activities or camp?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: He's just home?

14 THE PROSPECTIVE JUROR: Yes, he's home.

15 THE COURT: But he has friends he likes to play
16 with?

17 THE PROSPECTIVE JUROR: He has a couple friends in
18 the neighborhood, but that's about it.

19 THE COURT: But he's old enough to be left alone in
20 the house. It's not like it's an issue with child care, that
21 you need to have a parent there.

22 THE PROSPECTIVE JUROR: Right.

23 THE COURT: Would you just step back?

24 (Prospective juror leaves sidebar.)

25 MR. BRAFMAN: He tried, Judge.

Sidebar

383

1 THE COURT: If your spouse is upset, it wouldn't be
2 an excuse to get out of jury service.

3 MS. KASULIS: I think a lot of people's spouses are
4 going to be upset about the six weeks of jury duty. It sounds
5 like the child can care for himself but is just upset he can't
6 go on vacation until August instead of July.

7 MR. BRAFMAN: This is someone who made the effort
8 and came back. If he had told you that from the beginning he
9 can't change his vacation, we would have excused him.

10 THE COURT: We would have. But he can change it,
11 it's just his wife isn't happy.

12 MR. BRAFMAN: It's your call. I don't think there's
13 a challenge for cause, but I think he should be excused.

14 THE COURT: I think given the summer and all the
15 vacation schedules we're encountering, I don't want to lose
16 him.

17 (Prospective juror joins sidebar.)

18 THE COURT: Sir, I appreciate and apologize to your
19 wife, but I would just ask that you remain present for jury
20 selection because it appears that your son is old enough to
21 care for himself and I'm hoping that your vacation will be
22 just as wonderful later in August than it would be during the
23 time it's currently scheduled.

24 It's an important duty and everyone does serve, so I
25 will not excuse you at this time; all right, sir?

Sidebar

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1 THE PROSPECTIVE JUROR: No problem.

2 (Prospective juror leaves sidebar.)

3 (In open court.)

4 THE COURT: Does Juror No. 37 have any issue? No?

5 Good.

6 Juror 38, did you have any issues?

7 You with the hand up, are you Juror 39? All right.

8 I want to confirm, Juror 38, you didn't have your

9 hand up.

10 Okay. 39, please come forward.

11

12 (Continued on next page.)

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1 (Prospective juror present at sidebar.)

2 THE COURT: Hello.

3 THE PROSPECTIVE JUROR: Good morning.

4 THE COURT: Sir, yes.

5 THE PROSPECTIVE JUROR: First of all, I read about
6 this case from the beginning, since last year. I have a very
7 negative opinion about the defendant and I am afraid that,
8 especially if he use illegal means to, you know, purchase the
9 medicine, and the -- I don't think I would be able to overcome
10 it.

11 THE COURT: All right. Just to clarify, I read a
12 summary of what the charges are in the indictment. He is not
13 charged with any offenses relating to pharmaceutical pricing.
14 But my more important question for you is whether your reading
15 in the media and your formulating an opinion would prohibit
16 you from fairly and with an open mind considering only the
17 evidence presented at the trial and deciding the case based
18 only on that evidence and putting aside whatever personal
19 views you might have.

20 THE PROSPECTIVE JUROR: Well, I believe that
21 anything comes to medical, especially if you don't do any
22 research and development and you change that product and you
23 just pick up the price, it's a negative price, it is not
24 something you can purchase, you know, this is something people
25 need.

1 THE COURT: Okay.

2 THE PROSPECTIVE JUROR: Second, I also have some
3 vacation scheduled, which I am the only one driving.

4 THE COURT: When is your vacation, sir?

5 THE PROSPECTIVE JUROR: July 10th, week of July 10th
6 and another one in North Carolina the week of July 19th.

7 THE COURT: And those are not flexible vacations?

8 THE PROSPECTIVE JUROR: They have been prepaid. I
9 have my son who is away in college, he is coming, he has
10 summer semester.

11 THE COURT: I see. All right. Okay. Sir, we will
12 excuse you. Please go to the second floor jury room and tell
13 them that you are excused from this. Thank you.

14 (Prospective juror excused.)

15 THE COURT: No objections?

16 MR. BRAFMAN: No objection.

17 MS. KASULIS: No objection.

18 THE COURT: Did juror 40 have their hand up? No.
19 All right.

20 Juror No. 41, come on up, ma'am.

21 (Prospective juror present at sidebar.)

22 THE COURT: Juror No. 41, welcome.

23 THE PROSPECTIVE JUROR: Well, I had an accident, so
24 I had herniated discs. Sitting now, even now sitting, that's
25 why I asked him if I could stand, but it also caused me to

1 have surgeries. I'm supposed to be going right now two to
2 three times a week for physical therapy on my hand. Doing the
3 case for that long, I wouldn't be able to do it.

4 THE COURT: I wouldn't want to jeopardize your
5 health. Ma'am, we will excuse you, if you could go to the
6 second floor jury room where you checked in originally and let
7 them know you Juror No. 41 and have been excused.

8 THE PROSPECTIVE JUROR: Should I wait in the room?

9 THE COURT: No, go straight down. Let them know and
10 they will give you paperwork.

11 (Prospective juror excused.)

12 THE COURT: No objections?

13 MR. BRAFMAN: Correct.

14 MS. KASULIS: No objections.

15 THE COURT: Did Juror No. 42 have their hand up?

16 All right. Come up, sir.

17 (Prospective juror present at sidebar.)

18 THE COURT: Hello. Sir.

19 THE PROSPECTIVE JUROR: You started off asking the
20 question about difficulties.

21 THE COURT: Yes.

22 THE PROSPECTIVE JUROR: So, it is extremely
23 difficult because, first of all, I am ticketed to go to
24 Chicago next week, Thursday, and my family and my son's
25 family, they live in Toronto, negotiated for months to find a

1 period in the middle of July that we can go and see the
2 grandchildren. And July 17th, we're supposed to go to Toronto
3 and stay for a week. Everybody's arranged their whole
4 schedule.

5 THE COURT: I understand. So you have a lot of
6 family members who set this time aside.

7 THE PROSPECTIVE JUROR: Right. I don't know if you
8 want me to maybe answer some more questions.

9 THE COURT: Let me ask you to step back.

10 (Prospective juror leaves sidebar.)

11 THE COURT: Have you heard enough to excuse?

12 MR. BRAFMAN: No objection.

13 MS. KASULIS: No objection.

14 THE COURT: We will excuse Juror No.42.

15 (Prospective juror present at sidebar.)

16 THE COURT: I will excuse you. Go down to the
17 second floor. Have a nice trip.

18 (Potential juror excused.)

19 THE COURT: What about Juror No. 43? Did you have
20 your hand up, ma'am? Come on up.

21 (Prospective juror present at sidebar.)

22 THE COURT: How are you?

23 THE PROSPECTIVE JUROR: So I am currently a student
24 at SUNY Oswego. I go to school during the year and I start
25 August 16th. I don't think I'm going to have enough time to

1 prepare.

2 THE COURT: I don't think this case will last until
3 August 16th. In fact, that will be highly, highly unlikely,
4 if you are free between now and --

5 THE PROSPECTIVE JUROR: I'm not like free. I'm
6 working on research in the area.

7 THE COURT: That is nice. I see.

8 THE PROSPECTIVE JUROR: I wouldn't mind doing a
9 shorter case. I don't think I would be able to do a six-week
10 trial.

11 THE COURT: Is this research in connection with your
12 school?

13 THE PROSPECTIVE JUROR: Yeah, it's through my
14 school, but it's not in my school. It's at the job.

15 THE COURT: When does research start?

16 THE PROSPECTIVE JUROR: Yeah, it's currently going.

17 THE COURT: Are you paid for your research?

18 THE PROSPECTIVE JUROR: No, I am volunteer intern.

19 THE COURT: So you are gaining experience?

20 THE PROSPECTIVE JUROR: Yes, for my major.

21 THE COURT: Is there anyway you can get similar
22 research experience during the school year?

23 THE PROSPECTIVE JUROR: No, because during the
24 school year, I am just studying, like I don't have time to do
25 internships and stuff. So the summer is when I do my

1 internship.

2 THE COURT: Let me ask you to step back for a
3 moment.

4 (Prospective juror leaves sidebar.)

5 THE COURT: Pardon me?

6 MS. SMITH: It doesn't seem like -- she doesn't have
7 a job, she can do research on the weekends and night and she
8 doesn't start school until the 16th. I don't think there is
9 cause.

10 MR. BRAFMAN: I don't think there is cause, but it
11 would be nice if she didn't have this burden.

12 THE COURT: Well, let me see if she can do the
13 internship and research during the weekends.

14 (Prospective juror present at sidebar.)

15 THE COURT: Is it possible that your internship can
16 be done later in the evening so if we were to excuse you at
17 5:30, could you conduct the research in the evenings or on the
18 weekends?

19 THE PROSPECTIVE JUROR: I mean, it normally goes to
20 7:00. We usually get out like 7:00, because it is on Terrapin
21 turtles, so it all depends when they are, like, nests in the
22 area. It is usually -- we are usually done at 5:00. It is
23 from 7:00 to 7:00, but it never usually lasts until 7:00
24 because they stop nesting at 5:00.

25 THE COURT: You go somewhere in the wilderness.

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Can you do this on the weekends?

3 THE PROSPECTIVE JUROR: I can do this on the
4 weekends, but I am currently doing it four days a week, during
5 the week, Tuesday and Friday.

6 THE COURT: Let me have you step back.

7 (Prospective juror leaves sidebar.)

8 MR. BRAFMAN: How many people do we know who work
9 with turtles? Not many.

10 THE COURT: They would all be better people.

11 MS. KASULIS: We object to a cause strike.

12 THE COURT: Okay. It is really a matter of her
13 ability to conduct her internship. What I am going to do is
14 ask her to stay in the pool. She can check with her research
15 supervisors to see if she can do the research.

16 MS. KASULIS: Your Honor, maybe it is appropriate to
17 ask her about what she knows -- whether she read any media
18 about it before we keep her.

19 THE COURT: About the defendant?

20 MS. KASULIS:

21 (Prospective juror present at sidebar.)

22 THE COURT: Ma'am, have you read anything about this
23 case or about Mr. Shkreli in the media?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: Do you have any opinions about the case

1 based on what I have read to you about the summary of the
2 charges?

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: Let me then say this: We would really
5 like to keep you on this jury and see if there is a way you
6 can work with your supervisors to conduct your research on the
7 weekend or in the evening, if that is possible, we won't be
8 sitting July 3rd and 4th. That is Monday and Tuesday of next
9 week and then you would have the weekend.

10 THE PROSPECTIVE JUROR: Yeah, but I don't have feel
11 two days enough qualifies as an internship. If I write on my
12 resume like it is two days a week, it's not a lot of hours to
13 put in, you know.

14 THE COURT: So you won't get internship credit?

15 THE PROSPECTIVE JUROR: I don't think so, because
16 I'm currently doing it four days a week and five hours a day.
17 I don't think it would be -- if I leave here, if I do it after
18 work, I don't think I'm going to have enough time to get there
19 in time to do anything.

20 THE COURT: I see. Let me have you step back for
21 one moment.

22 (Prospective juror leaves sidebar.)

23 THE COURT: I think internships are important to
24 college students. They help foster further research
25 opportunities and also job opportunities and I would hate to

1 have her lose this opportunity. I think I am going to excuse
2 her.

3 (Prospective juror present at sidebar.)

4 THE COURT: Ma'am, we are going to excuse you,
5 please go to the second floor jury room and tell them that you
6 have been excused and they will give you paperwork.

7 (Potential juror excused.)

8 (In open court.)

9 THE COURT: Did Juror No. 44 have a hand up? Come
10 up, sir.

11 (Prospective juror present at sidebar.)

12 THE COURT: Hi, how are you sir No. 44.

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Tell us what your issues are regarding
15 scheduling.

16 THE PROSPECTIVE JUROR: I work for a financial
17 institution. We're going through OCC exam and I'm part of
18 that for the next two or three weeks, and I do money
19 laundering. I've also been experienced to a lot money
20 laundering cases, which -- wire fraud and things like that.

21 THE COURT: Well, this OCC exam, is it ongoing now?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Is there someone else at your job who
24 could assist the examiner and their colleagues with the
25 examination?

1 THE PROSPECTIVE JUROR: I am the key part of it,
2 though.

3 THE COURT: How so?

4 THE PROSPECTIVE JUROR: I'm the program manager who
5 has been on it for about three years. We do exams on
6 customers. I'm part of, you know, putting together the
7 policies and procedures from day one.

8 THE COURT: Is there anyone who you have supervised
9 or trained or a colleague of equal stature who can conduct the
10 work that you are charged with?

11 THE PROSPECTIVE JUROR: You know, probably, but I
12 guess it's like a performance thing, too. If I've been on it
13 for three or four years, at this point, when we get to the
14 end, not to cross the finish line. I'm worried about
15 performance too.

16 THE COURT: How long is this examination going to be
17 going on?

18 THE PROSPECTIVE JUROR: About a month.

19 THE COURT: When did it start?

20 THE PROSPECTIVE JUROR: Two weeks ago.

21 THE COURT: So it is two more weeks?

22 THE PROSPECTIVE JUROR: No, it is a month from now.
23 It is like a six-week exam total.

24 THE COURT: I see.

25 THE PROSPECTIVE JUROR: I have a face-to-face

1 meeting in about two weeks.

2 THE COURT: So four of the six weeks are going to be
3 falling within the trial period.

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Just step off to the side.

6 (Prospective juror leaves sidebar.)

7 THE COURT: I think we might have to let this one go.

8 MR. BRAFMAN: We would ask you to excuse him. I
9 don't want to raise any additional cause issues because I
10 think his schedule requires him to be excused.

11 THE COURT: It seems like he is overseeing the
12 examination and he sort of formulates the protocols and I
13 think it would be detrimental to his job and his examination
14 if he were not there.

15 MS. KASULIS: Can you inquire if his employer is
16 going to pay him during jury service?

17 THE COURT: All right.

18 (Prospective juror present at sidebar.)

19 THE COURT: Sir, what is your employer's policy on
20 paying employees for jury duty?

21 THE PROSPECTIVE JUROR: They do pay.

22 THE COURT: They do pay?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: I guess, you know, let me ask you
25 something about your statement that you made about auditing,

1 and financial issues, and wire fraud, and money laundering, I
2 summarized the charges for you in this case and the question I
3 would want to ask you is whether you could put aside the
4 experience you have had or whatever you have read, might have
5 read and decide this case, after hearing all of the evidence
6 and to listen to all of the evidence with an open mind and a
7 fair state of mind towards both sides, whether you could then
8 set aside whatever you might have read or been trained to do
9 and decide the base on the evidence?

10 THE PROSPECTIVE JUROR: I don't think I can. I've
11 gone through a lot of different cases. We have to decide
12 whether or not we file suspicion activity reports. We've done
13 a lot of investigations I have a lot of experience in that. I
14 don't know one way or another I would be impartial.

15 THE COURT: Okay. Thank you. Step back.

16 (Prospective juror leaves sidebar.)

17 MR. BRAFMAN: We would challenge him for cause.

18 MS. SMITH: That is fine.

19 THE COURT: We will allow him to be dismissed for
20 cause.

21 (Prospective juror present at sidebar.)

22 THE COURT: Sir, you are excused. Go to the second
23 floor where you checked in. You will get paperwork.

24 (Potential juror excused.)

25 (In open court.)

1 THE COURT: Juror No. 36, why don't you come back
2 for one moment. She is coming back. She was going to check
3 with her employer.

4 THE PROSPECTIVE JUROR: I got my response back and
5 she said she won't be able to pay for six weeks of jury duty.

6 THE COURT: Will they pay you for any part of it?

7 THE PROSPECTIVE JUROR: Four days maximum.

8 THE COURT: Four days. Well, I wouldn't want you to
9 be without your income, so we will excuse you. Go to the
10 second floor, please, and tell them that you have been excused
11 and they will give you your paperwork. Thank you.

12 (Prospective juror leaves sidebar.)

13 THE COURT: No objection; correct?

14 MR. BRAFMAN: No objection.

15 MS. SMITH: No objection.

16 MS. KASULIS: No objection.

17 THE COURT: Juror No. 45, come up.

18 (Prospective juror present at sidebar.)

19 THE COURT: Hello, how are you? Number 45.

20 THE PROSPECTIVE JUROR: Yes. I'm doing two
21 internships right now and I have to help my mom pay for bills,
22 so.

23 THE COURT: Are they paid internships?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: So you help your mother with her

1 finances?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Would your employer pay you if you were
4 on jury duty?

5 THE PROSPECTIVE JUROR: I don't think so.

6 THE COURT: Do you know?

7 THE PROSPECTIVE JUROR: Because its own I Li like
8 the summertime.

9 THE COURT: Where are you interning?

10 THE PROSPECTIVE JUROR: Tucker Psychology and
11 Travelers Tool Company.

12 THE COURT: So, you don't know whether they will pay
13 you; is that correct?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: Have you heard anything about this case.

16 THE PROSPECTIVE JUROR: I just heard what you hear
17 in the media.

18 THE COURT: Has what you have heard in the media
19 impaired your ability to be fair and impartial?

20 THE PROSPECTIVE JUROR: I mean, what I have heard is
21 how he increased the price of the drugs, and I don't think
22 that was right of him, to be honest, he just seems to care
23 about himself.

24 THE COURT: Well, if the case, as I summarized it
25 for you, does not charge anything regarding drug pricing, I

1 don't want to say that for sure there would be no evidence of
2 that, but if that were to come into the case, could you
3 maintain a fair and impartial mind toward both sides in this
4 case and decide this case based solely on the evidence at
5 trial?

6 THE PROSPECTIVE JUROR: I could try.

7 THE COURT: I appreciate you're trying. Are you
8 confident that you could maintain a fair and impartial state
9 of mind?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: All right. What I am going to ask you
12 to do is step out and retrieve your phone and call your
13 internships and see if they will continue to pay you during a
14 six-week trial and then come back. When you come back, we
15 will bring you back up here.

16 THE PROSPECTIVE JUROR: Okay. No problem.

17 THE COURT: Thank you.

18 (Prospective juror leaves sidebar.)

19 (In open court.)

20 THE COURT: Juror No. 46, did you have your hand up?
21 Yes. Come on up, please.

22 (Prospective juror present at sidebar.)

23 THE COURT: Hi. Number 46, how are you?

24 THE PROSPECTIVE JUROR: Okay. So, I know -- this is
25 really important, but like....

1 THE COURT: It is all right. Just tell us. It is
2 fine. It is important that you don't feel uncomfortable. It
3 is important for all of us what your thoughts are and if there
4 is a conflict in your schedule and whether there is some
5 reason that you couldn't be fair to both sides. Okay.

6 THE PROSPECTIVE JUROR: Okay, so, time duration,
7 first off, and I work part-time and part of my pay is on
8 commission base, so I feel like -- I do recreational painting
9 and I teach that to parties and workshops and I'm supposed to
10 teach summer camp in July, that's what my boss told me, so I
11 don't know like how that's going to pan out.

12 THE COURT: Okay.

13 THE PROSPECTIVE JUROR: And I don't know if I can be
14 objective in this case because based on what I know, it would
15 be difficult even though I do believe in a fair trial, I try
16 to be partial.

17 THE COURT: Impartial.

18 THE PROSPECTIVE JUROR: Impartial, so I just -- I'm
19 just not sure.

20 THE COURT: There are two things that we will
21 explore, first is that you have an obligation in your job to
22 teach summer camp in July; is that correct?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: And is there anyone else who could do
25 that teaching assignment?

1 THE PROSPECTIVE JUROR: I'm not sure.

2 THE COURT: Would your employer pay you if you were
3 on jury duty for six weeks?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: All right. Are you a student?

6 THE PROSPECTIVE JUROR: I have been a year out of
7 college.

8 THE COURT: All right. So you are still in a job
9 searching process?

10 THE PROSPECTIVE JUROR: A little.

11 THE COURT: Okay. Do you have any other jobs
12 besides this internship where you teach art?

13 THE PROSPECTIVE JUROR: No. Not right now.

14 THE COURT: All right. Let me ask you to step back
15 for a minute.

16 (Prospective juror leaves sidebar.)

17 THE COURT: I think we should excuse her for cause.
18 Does anyone object?

19 MR. BRAFMAN: No, I agree.

20 MS. KASULIS: We don't object.

21 THE COURT: We will excuse Juror No. 46.

22 (Prospective juror present at sidebar.)

23 THE COURT: We are going to excuse you. Please go
24 to the jury room where you checked in this morning and they
25 will give you paperwork.

1 (Potential juror excused.)

2 (In open court.)

3 THE COURT: Juror No. 47, did you have your hand up?
4 Yes. Come on up.

5 (Prospective juror present at sidebar.)

6 THE COURT: Hi.

7 THE PROSPECTIVE JUROR: To start with, I have been
8 in the healthcare profession for more than half my life, more
9 than 20 years. I have taken care of physical care patients
10 right now. Personally, I have a loved one from LGBT in
11 community, friends with me, like my second mom. I personally
12 known somebody on this AIDS medication, so I don't think I
13 will be fair to this person.

14 THE COURT: Well, as I summarized the charges, they
15 don't concern drug pricing, but there is a possibility that
16 some evidence of that might come in. Could you set aside your
17 personal experience and views and sit with an open mind and a
18 fair mind to both sides and decide the case based solely on
19 the evidence.

20 THE PROSPECTIVE JUROR: I am empathetic with my
21 patients. I cry with them. I don't think I will be the right
22 person to sit. I couldn't do that.

23 THE COURT: Let me ask you to step back.

24 (Prospective juror leaves sidebar.)

25 MR. BRAFMAN: I would challenge her for cause.

1 MS. KASULIS: No objection.

2 MS. SMITH: No objection.

3 THE COURT: Ma'am, we will excuse you for cause,
4 Juror No. 47 for cause, and ask you to go down to the jury
5 room and let them know you are being excused. Okay.

6 (Potential juror excused.)

7 (In open court.)

8 THE COURT: Juror No. 48, did you have your hand up?
9 All right. Come on up.

10 (Prospective juror present at sidebar.)

11 THE COURT: You are Juror No. 48?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Yes, ma'am, what is your conflict?

14 THE PROSPECTIVE JUROR: I read about the case and I
15 just lost my aunt to cancer and I feel that I might not be
16 partial.

17 THE COURT: Can you just explain a little bit the
18 connection between -- I'm sorry about your loss.

19 THE PROSPECTIVE JUROR: I read about what happened
20 with the drugs and things and I just feel that if he did it, I
21 think it was something not right for people.

22 THE COURT: He is not charged in this case with --

23 THE PROSPECTIVE JUROR: Yeah, but I just feel like I
24 have a strong feeling if he did it.

25 THE COURT: All right. You are saying it would make

1 it difficult, if not impossible --

2 THE PROSPECTIVE JUROR: To make a decision.

3 THE COURT: You wouldn't be able to be fair to both
4 sides then, the Government and the defense?

5 THE PROSPECTIVE JUROR: Probably not.

6 THE COURT: Let me ask you to step back.

7 (Prospective juror leaves sidebar.)

8 MR. BRAFMAN: We challenge her for cause.

9 MS. KASULIS: No objection.

10 THE COURT: All right. We will excuse you. Please
11 go to the second floor where you checked in this morning and
12 let them know you have been excused.

13 (Potential juror excused.) (In open court.)

14 THE COURT: Did Juror No. 49 have their hand up?
15 Come on up.

16 (Prospective juror present at sidebar.)

17 THE COURT: Hi. Come on up. Come closer.

18 THE PROSPECTIVE JUROR: I won't be able to serve. I
19 can't miss work for long periods of time. I have to maintain
20 a quota for our sales department, not doing so could
21 basically affect me losing my job.

22 THE COURT: You work on a quarter system in sales?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Would you be paid during jury service?

25 THE PROSPECTIVE JUROR: I believe so. Something

1 with the HR department.

2 THE COURT: Do you know for how long they would pay
3 you?

4 THE PROSPECTIVE JUROR: I'm not sure.

5 THE COURT: When you say you work on a quota system,
6 are you required to meet certain targets every month?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: If you don't.

9 THE PROSPECTIVE JUROR: If we don't, then we get
10 into a meeting and I don't know if I get -- I don't know if I
11 get -- what is that called? It is like a -- I'm sorry.

12 THE COURT: That's all right.

13 THE PROSPECTIVE JUROR: We have to meet a certain
14 amount, like a deadline or so.

15 THE COURT: But you said your employer will pay you?

16 THE PROSPECTIVE JUROR: I believe so. I have to
17 double-check.

18 THE COURT: Do you want to step out and retrieve
19 your phone and call your employer and find out whether you
20 will be paid for the six -week duration of the trial?

21 THE PROSPECTIVE JUROR: I can find out.

22 THE COURT: And then with regard to your sales work,
23 could you do that in the evenings or on the weekends?

24 THE PROSPECTIVE JUROR: No, I have to be in the
25 office to do that.

1 THE COURT: What kind of sales do you do?

2 THE PROSPECTIVE JUROR: I work for a private lender.
3 It is all about getting as much deals as we can.

4 THE COURT: And you have to use the office equipment
5 to do that?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Let me ask you to step back for a moment.
8 (Prospective juror leaves sidebar.)

9 THE COURT: I think I would excuse this person.

10 MR. BRAFMAN: We would excuse her. She is the one
11 who calls during dinner.

12 MS. KASULIS: I think we should have her check and
13 see.

14 THE COURT: All right.

15 (Prospective juror present at sidebar.)

16 THE COURT: Ma'am, please retrieve your phone. Ask
17 your employer whether you would be paid during the six weeks's
18 duration of the trial and also whether there is a way you can
19 perform your job either after hours or on weekends to maintain
20 your quotas, and then come back and let us know what your
21 employer said.

22 THE PROSPECTIVE JUROR: Okay.

23 (Prospective juror leaves sidebar.)

24 THE COURT: Juror No. 45, can you come back up here.

25 (Continued on next page.)

Side Bar

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1 (Side bar continues; Prospective Juror 45 joins.)

2 THE PROSPECTIVE JUROR: They said they wouldn't pay
3 me.

4 THE COURT: They won't pay you?

5 THE PROSPECTIVE JUROR: It's not full time.

6 THE COURT: Okay. Well, we are sorry to hear that
7 but we understand. So I am going to excuse you. You can go
8 down to the jury room on the second floor and let them know
9 that you have been excused from this jury. Thank you.

10 THE PROSPECTIVE JUROR: Okay. Thank you.

11 THE COURT: Thanks.

12 (Prospective juror excused.)

13 MR. BRAFMAN: That was number 45?

14 THE COURT: Yes. 45 is excused without objection,
15 correct?

16 MR. BRAFMAN: Correct.

17 MS. KASULIS: Yes.

18 THE COURT: All right. Juror 50, just so you know,
19 was seen with a newspaper this morning. Did you take it from
20 him?

21 THE CLERK: I did. I brought it outside.

22 THE COURT: The CSOs have it. It might have been
23 the Post, but we will inquire.

24 (In open court.)

25 THE COURT: Juror 50, did you have your hand up?

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Side Bar

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1 Please come up.

2 (Side bar continues; prospective juror joins.)

3 THE COURT: Hi, sir. You are number 50, right?

4 THE PROSPECTIVE JUROR: 51 -- 50. I'm sorry.

5 THE COURT: This is your name?

6 THE PROSPECTIVE JUROR: Yes. I apologize.

7 THE COURT: Come close. Okay. You have a scheduled
8 conflict?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: What is it?

11 THE PROSPECTIVE JUROR: It's doctors and health
12 appointments.

13 THE COURT: Can they be rescheduled?

14 THE PROSPECTIVE JUROR: No, actually. No. You want
15 more detail because I have proof?

16 THE COURT: No, that's all right. I don't want to
17 ask you to reschedule anything.

18 THE PROSPECTIVE JUROR: The thing is in a normal,
19 normal six week period, I would have three appointments. This
20 particular one, I have four, and I have proof of at least one
21 of them here with me.

22 THE COURT: Okay.

23 THE PROSPECTIVE JUROR: I don't want you to think
24 it's BS or anything. It's chronic pain related stuff.

25 THE COURT: Okay. All right.

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Side Bar

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1 THE PROSPECTIVE JUROR: I'll give you more detail if
2 you want.

3 THE COURT: I think --

4 THE PROSPECTIVE JUROR: I'll go into more detail.
5 Anything you want to know.

6 THE COURT: No. I appreciate --

7 THE PROSPECTIVE JUROR: Matter of fact, I couldn't
8 remember what the number was because I'm thinking of the pain.

9 THE COURT: Do you take pain medication?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Does that affect your ability to be a
12 clear thinker and to understand?

13 THE PROSPECTIVE JUROR: Probably not the medicine,
14 no, but the fact that I have the pain distracts my attention.

15 THE COURT: So, the pain is not alleviated by
16 medication?

17 THE PROSPECTIVE JUROR: Well, I'm going to get it at
18 the appointment.

19 THE COURT: Okay.

20 THE PROSPECTIVE JUROR: I need to go to the
21 appointment to get it. And the other thing is physical
22 therapy every other week so that would be three, four. I'm
23 sorry to sound whiny.

24 THE COURT: No. That's all right. No, you're not,
25 sir. It's important that you be comfortable.

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Side Bar

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1 THE PROSPECTIVE JUROR: Age related stuff. Sorry.

2 THE COURT: Okay. Sir, I am going to excuse you.

3 Please go to the second floor where you checked in this
4 morning and tell them that you are excused. All right.

5 THE PROSPECTIVE JUROR: All right. Do you want to
6 see it? I really feel --

7 THE COURT: You're under oath. You're under oath.

8 THE PROSPECTIVE JUROR: That's why I offered to
9 prove it.

10 THE COURT: Well, I am taking at face value your
11 representation.

12 THE PROSPECTIVE JUROR: You don't have to. I have
13 proof.

14 THE COURT: I see that you have documentation.

15 THE PROSPECTIVE JUROR: I just want you to know.
16 Thank you.

17 THE COURT: Please be well. Thank you.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Juror 51, come on up.

21 (Side bar continues; prospective juror joins.)

22 THE COURT: Number 51?

23 THE PROSPECTIVE JUROR: Yes. I'm a solopreneur of
24 two businesses. Four to six weeks would absolutely tank me.

25 THE COURT: What business are you in?

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Side Bar

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1 THE PROSPECTIVE JUROR: I'm a media coach. I coach
2 people on body language and I'm also an actor.

3 THE COURT: I see. And when do you perform your job
4 in coaching? Is that every day during business hours?

5 THE PROSPECTIVE JUROR: Mostly during business
6 hours. I have one beginning tonight and I had an audition
7 last night. They're not usually at night, they're during the
8 day, and when my clients need me, they need me now.

9 THE COURT: All right. So you work with them during
10 the day?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. And is there anyone else
13 that you can ask to assist you with the jobs that you do?

14 THE PROSPECTIVE JUROR: I'm a solopreneur.

15 THE COURT: I see. Let me ask you to step back.

16 (Prospective juror leaves side bar.)

17 THE COURT: Any objection to excusing her?

18 MR. BRAFMAN: No.

19 MS. KASULIS: No.

20 (Prospective juror joins side bar.)

21 THE COURT: Ma'am, I'm going to excuse you. If you
22 could just go down to the second floor and tell them you have
23 been excused.

24 (Prospective juror excused.)

25 (In open court.)

CMH

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Side Bar

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1 THE COURT: Juror 52, did you have your hand up?
2 Come on up, please.

3 (Side bar continues; prospective juror joins.)

4 THE COURT: Hi, ma'am. How are you?

5 THE PROSPECTIVE JUROR: I'm fine.

6 THE COURT: You're number 52?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you. Please come close and tell
9 us what your issues are.

10 THE PROSPECTIVE JUROR: I have two issues. The
11 length of the trial is too long.

12 THE COURT: Six weeks?

13 THE PROSPECTIVE JUROR: Yes. It's too long. I have
14 a trip on the 28th of July and I'm back on the 13th of August.

15 THE COURT: I see. Is it out of state?

16 THE PROSPECTIVE JUROR: It's overseas.

17 THE COURT: Okay. And is there any flexibility on
18 the trip?

19 THE PROSPECTIVE JUROR: No. No. And I cannot be
20 replaced at work. I work for the airlines and I'm the only
21 one in charge here.

22 THE COURT: Okay. All right. You're the only
23 employee of the airline?

24 THE PROSPECTIVE JUROR: No, of my department.

25 THE COURT: I see. I see. Let me ask you to step

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Side Bar

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1 back for a minute.

2 (Prospective juror leaves side bar.)

3 MR. BRAFMAN: No objection.

4 THE COURT: All right. No objection?

5 MS. KASULIS: No objection.

6 (Prospective juror joins side bar.)

7 THE COURT: Ma'am, we will excuse you. If you could
8 please go to the second floor where you checked in this
9 morning and let them know that you have been excused.

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Is juror 53 here? Did you have any
15 issues that you needed to discuss?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Come on up, please.

18 (Side bar continues; prospective juror joins.)

19 THE COURT: Hi. How are you?

20 THE PROSPECTIVE JUROR: Good.

21 THE COURT: Come on up. Yes, ma'am. You are
22 number --

23 THE PROSPECTIVE JUROR: -- 53.

24 THE COURT: Yes, ma'am.

25 THE PROSPECTIVE JUROR: I'd like to be excused for

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Side Bar

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1 my health reason. Two weeks ago, I had CAT scan, bloods, for
2 the abdomen. I'm still back and blue. And I'm scheduled on
3 June 30th to have sonogram of abdomen. July 13th, I need to
4 have doctor appointment and MRI.

5 THE COURT: All right. Ma'am, we're going to excuse
6 you so please go to the second floor.

7 THE PROSPECTIVE JUROR: Thank you.

8 THE COURT: Tell them you have been excused.

9 Juror number --

10 THE PROSPECTIVE JUROR: 53.

11 THE COURT: -- is excused without objection,
12 correct?

13 MS. KASULIS: No objection.

14 MR. BRAFMAN: Yes.

15 THE COURT: Okay. Thank you.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Juror 54, come on up, ma'am.

19 (Side bar continues.)

20 THE COURT: After we finish this, we have 12 more on
21 reserve.

22 (Prospective juror joins side bar.)

23 THE COURT: Come on up, ma'am. You're number 54?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Hi. How are you?

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Side Bar

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1 THE PROSPECTIVE JUROR: Good. How are you?

2 So I have a couple of reasons why I can't serve for
3 six weeks. Number one is I have a very demanding job in
4 health care at a school of medicine. I'm involved in three
5 different negotiations right now and a number of
6 investigations. I know I have a duty to serve but six weeks
7 will kill me, my job.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: I'm also a single parent and
10 the father is not in the picture, so ...

11 THE COURT: Okay. How old are your children?

12 THE PROSPECTIVE JUROR: One is older, but I have a
13 15 year old at home and he can't be by himself.

14 THE COURT: Okay. All right. So where is it that
15 you do your research or you do your medical job?

16 THE PROSPECTIVE JUROR: At Mount Sinai.

17 THE COURT: And what is your position there?

18 THE PROSPECTIVE JUROR: I'm associate dean for
19 faculty and staff relations.

20 THE COURT: I see. Okay. Let me ask you to step
21 back for a moment.

22 (Prospective juror leaves side bar.)

23 THE COURT: All right. Any views?

24 MR. BRAFMAN: No objection.

25 THE COURT: To be excused as a juror? It sounds

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FCRR

Side Bar

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1 like she has a lot going on at work that would be difficult
2 for her.

3 MS. KASULIS: Did she say investigation?

4 THE COURT: She's undergoing an investigation that
5 she's responding to, it sounds like.

6 MS. SMITH: I think that's fine.

7 THE COURT: To excuse her?

8 MS. SMITH: Yes.

9 (Prospective juror joins side bar.)

10 THE COURT: Ma'am, we will excuse you. So please go
11 to the second floor where you checked in this morning and tell
12 them that you have been excused. Okay?

13 THE PROSPECTIVE JUROR: Thank you.

14 (Prospective juror excused.)

15 MR. BRAFMAN: Judge, can we take ten minutes?

16 THE COURT: Yes. Before I let you go, I just want
17 to make sure we have 12 more jurors. We have how many so far.

18 THE CLERK: We have 15 downstairs waiting.

19 THE COURT: How many did we select from yesterday?
20 We had 47.

21 THE CLERK: Today we have 13 plus one with the phone
22 call from her employer.

23 THE COURT: We have 15 today?

24 THE CLERK: Fourteen.

25 THE COURT: Fourteen today? Okay. We have 61.

Side Bar

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1 MS. SMITH: Your Honor, we have not yet asked this
2 pool whether they know the defendant.

3 THE COURT: No, I know. We haven't asked anybody.

4 MS. SMITH: We haven't asked --

5 THE COURT: That's why I'm trying to build up a
6 pool.

7 MS. SMITH: I think we probably are going to need
8 more people because I think a number of people that are left
9 raised their hands when you asked that question initially.

10 THE COURT: What we are going to do is we have 15
11 more downstairs plus the folks we had talked to yesterday that
12 we set aside. What we will do is excuse this group to go
13 downstairs to wait further. We'll examine after the break the
14 additional 15 and that's all we have for today. So,
15 hopefully, that will be a big enough pool. All right?

16 MR. BRAFMAN: Yes, Judge.

17 THE COURT: All right. Let's take five and I will
18 instruct the jurors.

19 (In open court; side bar ends.)

20 THE COURT: At this time, I had like to thank all
21 the jurors that have indulged us and been very patient. We
22 will be asking you to go back to the jury room. We have
23 additional jurors that we would like to examine.

24 So, please retrieve your phones and other devices if
25 you wish. You may call your jobs, but please don't do any

1 research, do not look at any news media reports or pop-ups
2 that may come up on your phone. Do not speak about this case
3 with anybody, not even amongst yourselves.

4 The jury room you checked in this morning is on the
5 second floor. I would ask you to just return there until
6 further notice and, again, do not talk about the case with
7 anybody. If anyone attempts to approach you about the case,
8 please let me know immediately.

9 Thank you very much for your attention. We will get
10 back to you as soon as we can.

11 (Prospective jurors exit.)

12 THE COURT: All right. Let's take a five-minute
13 recess, please.

14 (Recess taken.)

15 (In open court; prospective jurors not present.)

16 THE COURT: Are we all ready?

17 THE CLERK: Yes, Judge.

18 MS. ZELLAN: Before we go on the record --

19 THE COURT: I would prefer it be on the record.

20 MS. ZELLAN: I just wanted the Court to know that we
21 provided two copies of additional exhibits that we anticipate
22 may be used during the course of this week for
23 cross-examination of witnesses.

24 THE COURT: All right. Thank you. You've provided
25 it to whom, to us?

1 MS. ZELLAN: Provided it to the Court and the
2 Government last night.

3 THE COURT: Thank you.
4 (Pause.)

5 THE CLERK: All prospective jurors are present.

6 THE COURT: All right.

7 Good morning, ladies and gentlemen. My name is
8 Judge Kiyo Matsumoto. My courtroom staff includes my case
9 manager, Ms. Sandra Jackson, my law clerk, Mr. Vivek Tata, and
10 I'd like to welcome you here and thank you for your patience.

11 Can everybody hear me? If not, please raise your
12 hand.

13 Thank you. Please pay close attention as I go
14 through these questions and instructions because it is
15 important for you to answer us truthfully as we go through
16 this selection process.

17 Please also don't speak to anybody about this case
18 throughout this proceeding and if you are selected for the
19 trial.

20 You are here today because we are about to select
21 the jury to serve in a criminal case. Trial is expected to
22 begin as soon as we finish jury selection and to continue up
23 to six weeks. We will not hold trial on Monday, July 3rd or
24 Tuesday, July 4th. Fortunately, this particular case promises
25 to be interesting and educational for all who are selected to

1 serve as jurors.

2 This is a criminal case commenced by the United
3 States which is frequently referred to as "the Government."
4 Representing the United States are Assistant United States
5 Attorneys Jacquelyn Kasulis, Alixandra Smith, G. Karthik
6 Srinivasan and also seated at the government's table are
7 Special Agent Michael Braconi and Special Agent Sean Sweeney
8 from the Federal Bureau of Investigation and paralegal
9 specialist Gabriela Balbin.

10 The defendant in this case is Mr. Martin Shkreli.
11 He is represented by attorneys Benjamin Brafman, Marc
12 Agnifilo, Andrea Zellan, Jacob Kaplan and later will be joined
13 by Teny Geragos.

14 The fact that this prosecution is brought in the
15 name of the United States does not entitle the Government to
16 any greater consideration than any other party who appears in
17 court. All parties, the Government and individuals, are
18 equals before the Court and are entitled to equal
19 consideration by the jury. No party is entitled to sympathy
20 or favor.

21 The purpose of this jury selection is to make sure
22 that fairness and impartiality of all jurors will be selected
23 and ensured so that the parties may receive a fair trial. The
24 way we try to be sure that a jury will be fair and impartial
25 is by going through a process called voir dire. Basically, I

1 will be asking you questions both as a group and individually
2 about your background and views on certain subjects. It is
3 not my intention to invade your privacy, but simply to try to
4 ensure that you can sit fairly and impartially in this
5 particular case.

6 At times, this will be tedious and I ask for you
7 please to give me further patience and indulgence.

8 If in the course of questioning you do think that
9 because of some experience you have had in your life or
10 because of something you have heard, read or that you have
11 formulated an opinion that would prohibit you from being fair
12 and impartial, that is, you would be inclined toward the
13 Government or toward the defendant regardless of what the
14 evidence in the case showed, it is your duty to tell me that.
15 That is because the Government and the defendant have a right
16 to a qualified impartial jury, one that will decide the case
17 without fear, favor, prejudice or passion, and will render a
18 verdict based solely on the evidence presented at the trial
19 and will apply the law as I instruct you.

20 Quite apart from whether or not I must excuse you or
21 some of you, the lawyers in the case both have an opportunity
22 to exercise a certain number of what are called peremptory
23 challenges which means they may excuse the juror for no
24 reason. If you are excused, no personal affront is intended.
25 It is important to listen because the answers that you give me

1 will be under oath. I will now ask Ms. Jackson to administer
2 the oath.

3 Please raise your right hand.

4 (Prospective jurors sworn.)

5 THE COURT: Thank you.

6 This criminal case comes before the Court by way of
7 an indictment. The indictment is captioned United States of
8 America against Martin Shkreli. The indictment is simply the
9 document that the Government uses to state the charges against
10 a defendant. It serves no other purpose and it is not
11 evidence.

12 I am going to summarize the charges in the
13 indictment so you can understand what this case will be about
14 but, again, remember, that any evidence pertaining to the
15 charges will come before you only when we begin the actual
16 trial.

17 I will now summarize the indictment.

18 The defendant Martin Shkreli is charged in an eight
19 count indictment with committing various acts of securities
20 fraud, conspiracy to commit securities fraud and conspiracy to
21 commit wire fraud.

22 In Counts One through Three, defendant Mr. Shkreli
23 is charged with conspiracy to commit securities fraud,
24 conspiracy to commit wire fraud and a substantive count of
25 securities fraud in relation to an entity known as MSMB

1 Capital.

2 In Counts Four through Six, Mr. Shkreli is charged
3 with a conspiracy to commit securities fraud, conspiracy to
4 commit wire fraud and a substantive count of securities fraud
5 in relation to an entity known as MSMB Healthcare.

6 In Counts Seven and Eight, Mr. Shkreli is charged
7 with a conspiracy to commit securities fraud and conspiracy to
8 commit wire fraud in relation to an entity known as Retrophin.

9 Mr. Shkreli has pleaded not guilty to all of the
10 charges in the indictment and has thus raised issues of fact
11 to be determined by a jury.

12 Let me now advise you that it is the Government that
13 has the burden of proof in any criminal case to establish a
14 defendant's guilt beyond a reasonable doubt as to each element
15 of the charged offense.

16 The defendant is presumed to be innocent throughout
17 the trial. In that regard, the defendant has no burden to
18 present any witnesses or evidence or to testify. Because the
19 United States constitution protects a defendant's right not to
20 incriminate himself and indeed to remain silent, the law
21 prohibits you from considering when you deliberate that the
22 defendant may not have testified in this case. This is a
23 basic principle of our criminal justice system.

24 The role of the jury in a criminal case is to hear
25 the evidence and decide the facts, that is, to decide what

1 happened. The judge does not have any role to play in your
2 determination of the facts. As the judge, my role is to
3 instruct you on the applicable law. You will apply the facts
4 as you find them to the law as I instruct you and your
5 conclusion will be your verdict. You must apply the law as
6 stated by me regardless of any opinion you personally may have
7 as to what the law is or what the law should be. If any of
8 you would have any difficulty doing this, you must bring that
9 to my attention.

10 Now, what we are going to do is to ask you a series
11 of questions and, for an example, I will ask whether any
12 jurors know any of the attorneys or the parties in this case.
13 It is important for all of you to listen carefully to my
14 questions and to pay close attention to all of my questions
15 and to make a note if your answer to my question would be
16 "yes." I'll ask you to raise your hand and you should raise
17 your hand and we will speak to you about your raised hand.

18 Consistent with the oath that you have just taken to
19 answer truthfully, honestly, conscientiously and candidly and
20 completely, it is very important that you listen carefully to
21 my questions. Again, I will ask you to raise your hand if you
22 have something that you would like to share in relation to
23 that question. For some questions, you may be asked to answer
24 the question from where you are seated but most likely, I will
25 ask you to come to side bar which is an area over here so that

1 you may answer questions outside the hearing of everyone else
2 in the courtroom. You will not be heard by the other jurors
3 or anyone else in the courtroom. There will be attorneys and
4 the parties necessary to be present and listen to your
5 answers. In addition, because judicial proceedings are open
6 and public, one press reporter will also be present at side
7 bar.

8 If I ask you to come to side bar to discuss your
9 answer further, I will not use your name. Rather, I will use
10 the number that we have given you so that your answers will
11 not be associated with your name. It is critical to the
12 parties' right to a fair trial that all jurors be candid and
13 truthful in answering my questions. If there are certain
14 questions that you feel that you would rather answer without
15 the presence of a reporter, please let me know and I will ask
16 the reporter to step back.

17 Is there anyone who either did not understand or
18 cannot accept any of the principles of law that I have just
19 described? Please raise your hand.

20 Now, I am going to ask you questions that we will
21 perhaps discuss at side bar.

22 First, knowing that this trial will begin as soon as
23 we finish jury selection and continue for approximately six
24 weeks, is there anyone who would find it extremely burdensome
25 to serve on this jury?

1 Please recognize that the Court acknowledges that
2 jury service is an inconvenience, but you must ask yourself
3 whether your service on this jury will be so much more
4 inconvenient or burdensome for you than for anyone else. You
5 should also ask yourself what attitude you would want a juror
6 to have if you or someone you cared about deeply were to be
7 tried by a jury. The right to a trial by jury is a
8 fundamental constitutional right and you should bear in mind
9 the sacrifices that have been made throughout our country's
10 history to preserve and defend the rights under our
11 constitution.

12 Now, given that I have told you about the six week
13 trial, I also want to raise another issue which we may discuss
14 at side bar and that is whether any of you have heard anything
15 about this case before today. It is very likely that given
16 the amount of media attention in this case, you may have read
17 about or heard about matters relating to Mr. Shkreli. It is
18 not wrong for you to have an opinion but, rather, the critical
19 question is whether your opinion will interfere with your
20 ability to be fair and impartial to both sides in this case
21 and to decide the case based solely on the evidence and the
22 instructions of law at this trial.

23 So those are the two preliminary questions: First,
24 whether this six-week trial will pose an undue burden and,
25 second, whether hearing about anything in the media would have

Side Bar

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1 caused you to form an opinion and whether that opinion would
2 have caused you to be unable to listen impartially and fairly
3 to both sides.

4 If your answers to any of my questions would be
5 "yes," please raise your hand.

6 All right. We have Juror Number 2. We will see you
7 at side bar, ma'am. I'm sorry. I'm going to call you seat
8 number 2, Juror Number 55. We will see you at side bar.

9 (The following occurred at side bar; prospective
10 juror joins.)

11 THE COURT: Number 56. Come close. What are your
12 issues?

13 THE PROSPECTIVE JUROR: My issue is my work. It's
14 the time we have to close the year and my position is a key
15 position so I need to be close the books.

16 THE COURT: The fiscal year ends June?

17 THE PROSPECTIVE JUROR: June 30th.

18 THE COURT: And are you the only bookkeeper in your
19 organization that could close the books?

20 THE PROSPECTIVE JUROR: Actually, I'm working for --
21 do I have to disclose that?

22 THE COURT: No. Don't tell us where you work,
23 but --

24 THE PROSPECTIVE JUROR: In my department, yes.

25 THE COURT: You are the only person in your

CMH

OCR

RMR

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FCRR

1 department who can close the books?

2 THE PROSPECTIVE JUROR: Yes, that division.

3 THE COURT: Is it possible for your employer to pull
4 people from other divisions to perform the work that you are
5 doing?

6 THE PROSPECTIVE JUROR: I don't think so. I'm
7 really very much like a key position.

8 THE COURT: Okay. And do you get paid for jury
9 duty?

10 THE PROSPECTIVE JUROR: I believe so.

11 THE COURT: You do. And would you be paid for the
12 entire six weeks?

13 THE PROSPECTIVE JUROR: I think for three days.

14 THE COURT: Three days?

15 THE PROSPECTIVE JUROR: I'm not sure exactly how
16 much.

17 THE COURT: Okay.

18 THE PROSPECTIVE JUROR: I don't know.

19 THE COURT: So, are you working for an accounting
20 firm, is that what you do?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. And are there other accountants
23 who could be assigned to help you?

24 THE PROSPECTIVE JUROR: I'm not working for an
25 accounting firm. I'm working for a finance department under a

Side Bar

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1 different educational department, institution.

2 THE COURT: I see. An educational institution in
3 the finance department?

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: Okay. And as far as you know, there's
6 no one else who could fill in for you?

7 THE PROSPECTIVE JUROR: For that division, I am the
8 only one.

9 THE COURT: Let me ask you to step back for a
10 moment, please. Just right there. Thank you.

11 (Prospective juror leaves side bar.)

12 THE COURT: Does anyone want to continue to press
13 her to see if she can serve?

14 MR. BRAFMAN: I don't want to press her to serve.

15 MS. KASULIS: Can we confirm, Your Honor, the number
16 of days that she gets paid?

17 THE COURT: All right.

18 (Prospective juror joins side bar.)

19 THE COUR: Ma'am, you mentioned that your employer
20 might, you believe your employer would pay you for part of the
21 time that you are on jury service if not all of it. Would you
22 be able to think back to your employment policy, can you
23 recollect how many days you would be paid?

24 THE PROSPECTIVE JUROR: I'm not sure but I think
25 it's three days.

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Side Bar

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1 THE COURT: Three days? All right. I might ask you
2 if you could go and retrieve your phone and speak to your
3 employer and ask, one, how many days you would be paid for
4 jury service and, two, whether it is possible, if you are
5 selected, that they could find someone for the six weeks that
6 you would serve?

7 THE PROSPECTIVE JUROR: Okay. All right.

8 THE COURT: Okay? Thank you.

9 THE PROSPECTIVE JUROR: Can I do it right now?

10 THE COURT: Yes. And when you come back, we will
11 just bring you back to side bar. Okay?

12 THE PROSPECTIVE JUROR: Thank you.

13 (Prospective juror leaves side bar.)

14 (In open court.)

15 THE COURT: Was there anyone else in the first row
16 who had your hand up? Juror Number 59.

17 (Side bar continues; prospective juror joins.)

18 THE COURT: Are you Juror Number 58? Is this you?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. This is Juror Number 58.

21 Yes, ma'am.

22 THE PROSPECTIVE JUROR: Hi. As much as I would love
23 to be able to perform my civic duty, my fear is my mom is very
24 sick right now. She's going through chemotherapy. She also
25 has a bad heart so we're deciding whether to do a stent or

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FCRR

Side Bar

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1 bypass. My fear is if I get in the middle of this and
2 something happens --

3 THE COURT: Okay.

4 THE PROSPECTIVE JUROR: I also work two jobs and I'm
5 the only provider for my kids. So that's another issue.

6 THE COURT: All right.

7 THE PROSPECTIVE JUROR: But I'm just afraid of
8 getting involved and something happens to her and I'm here.

9 THE COURT: I see. Do either of your jobs pay you
10 to be on jury duty?

11 THE PROSPECTIVE JUROR: I don't know about my main
12 job. I'm a manager. My other one, my other job, I'm a
13 contractor and, actually, I deliver newspapers at night.

14 THE COURT: I see.

15 THE PROSPECTIVE JUROR: But that I would not get
16 paid for.

17 THE COURT: Let me ask you to step back for one
18 moment, please.

19 THE PROSPECTIVE JUROR: Sure.

20 (Prospective juror leaves side bar.)

21 THE COURT: I would be inclined to excuse Juror
22 Number 58 given her mother's medical issues and her role as a
23 sole provider.

24 MS. KASULIS: No objection.

25 MR. BRAFMAN: No objection.

Side Bar

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1 THE COURT: Thank you.

2 (Prospective juror joins side bar.)

3 THE COURT: We will excuse you. Please go down to
4 the jury room and tell them you have been excused. Thank you.

5 (Prospective juror excused.)

6 (In open court.)

7 THE COURT: All right. Were there any other hands
8 up?

9 Okay. Juror Number Five, come on up.

10 (Continued on next page.)

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Sidebar

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1 (Continuing)

2 (In open court.)

3 THE COURT: This is Juror 57. Come up.

4 (Sidebar continues; prospective juror joins.)

5 THE COURT: Yes, what did you want to tell us?

6 THE PROSPECTIVE JUROR: I didn't quite understand
7 the question, but I work on Rikers Island and I don't want to
8 the sit on the case.

9 THE COURT: Well, ma'am, there's two different
10 things: One is we do want to understand whether your job
11 would prohibit you from serving on this case; and, two, to
12 emphasize to you that it's the civic duty of every citizen to
13 sit on a jury and to serve their civic duty of service. I
14 understand it would be possibly inconvenient or disruptive to
15 you, but anyone who gets called is expected to come in and to
16 try to serve to the best of their ability.

17 What we are interested in knowing is whether, A,
18 your job would pay you to serve. And it's Rikers, so my guess
19 is they would, but do you know for sure whether they would?

20 THE PROSPECTIVE JUROR: I work in the school
21 department.

22 THE COURT: School?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Do you get paid when you're on jury
25 duty?

Sidebar

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1 THE PROSPECTIVE JUROR: I don't know.

2 THE COURT: Is your employer the Department of
3 Education?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: I'm reasonably -- I seem to recollect
6 that the Department of Education does pay jurors.

7 But the second is let's explore why you initially
8 said you don't want to serve on the case. Is it because of
9 some feelings you have or is it just about not wanting to be
10 here six weeks?

11 THE PROSPECTIVE JUROR: I don't want to be here for
12 six weeks.

13 THE COURT: Can you give us a reason why?

14 THE PROSPECTIVE JUROR: I never served on jury.

15 THE COURT: Everybody serves at some point or
16 there's always a first time for everything.

17 What jury service requires is that you listen
18 carefully, that you pay attention, that you maintain a fair
19 and open mind to both the Government and the person who is
20 charged. The question is whether you could do that.

21 Could you be fair to both sides in this case?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Have you heard about or read
24 anything about Mr. Shkreli?

25 THE PROSPECTIVE JUROR: No.

Sidebar

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1 THE COURT: All right. And other than what I
2 acknowledge is a disruption in your life to come every day to
3 the courthouse from 9 to 5:30, is there any other reason why
4 you don't either want to serve or believe you could not be a
5 good, fair, and impartial juror?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Okay. Do you have any vacations out of
8 state planned during the six weeks?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Where are you going?

11 THE PROSPECTIVE JUROR: I was going to Florida.

12 THE COURT: Do you have your tickets already?

13 THE PROSPECTIVE JUROR: No, not yet.

14 THE COURT: How were you going to go, by car or
15 plane?

16 THE PROSPECTIVE JUROR: I was flying.

17 THE COURT: Will you be able to make your trip in
18 late August instead of sometime in the next six weeks?

19 THE PROSPECTIVE JUROR: Okay.

20 THE COURT: Okay?

21 THE PROSPECTIVE JUROR: Okay.

22 THE COURT: Let me just ask you to step back one
23 moment.

24 (Prospective juror leaves sidebar.)

25 MR. BRAFMAN: Could you ask the juror whether her

Sidebar

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1 job with Corrections would cause her to unfairly favor the
2 Government or does she think she could be open-minded?

3 THE COURT: She's actually Department of Education
4 but works on Rikers, but I will ask her that.

5 (Prospective juror joins sidebar.)

6 THE COURT: Ma'am, is there anything about your job
7 with the Department of Education or the location of your job,
8 which I think you said was at Rikers Island, that would cause
9 you to have feelings of being more or less in favor of the
10 Government or a defendant on trial?

11 THE PROSPECTIVE JUROR: Yes. If he were to come in
12 there, I would see him.

13 THE COURT: First of all, this is a federal case, so
14 Rikers is not a federal facility.

15 But in any event, what I want you to keep in mind is
16 every defendant who is charged with an offense is entitled to
17 a presumption of innocence. And it's only if twelve jurors
18 are convinced beyond a reasonable doubt that the defendant is
19 guilty -- that is, the Government has proven every element of
20 every offense -- that a jury may then decide whether they wish
21 to find that defendant guilty.

22 So, the question is whether your job and location of
23 your job would make you feel more or less favorable towards a
24 Government or a defendant or do you have neutral feelings
25 about both?

Sidebar

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1 THE PROSPECTIVE JUROR: I have neutral feelings.

2 THE COURT: All right. Thank you. I'll ask you to
3 step back.

4 (Prospective juror leaves sidebar.)

5 MR. BRAFMAN: Your Honor, I don't want to push the
6 envelope, but the answer to the question is if he went to
7 Rikers Island she would see him. That's hardly consistent
8 with the presumption of innocence.

9 MS. KASULIS: I understand.

10 MR. BRAFMAN: I know that you have asked properly,
11 but I'm going to request a challenge for cause. I don't know
12 that I have the record yet, but I do think that A, she is with
13 Corrections and she immediately said if the Defendant gets
14 there, she's going to see him. And that's hardly someone who
15 is looking at this with a benign eye towards the Defendant.

16 That's just my own opinion.

17 THE COURT: I will ask her what assumptions she made
18 in making that statement.

19 (Prospective juror joins sidebar.)

20 THE COURT: So, have you formulated any feelings or
21 opinions about a defendant who is charged with an offense and
22 has not yet faced a trial as to whether that person is more or
23 less likely guilty in your mind?

24 Because you made a statement that said, If he comes
25 to Rikers, I will see him.

Sidebar

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1 Do you have a sense that because he's simply been
2 charged with an offense and without hearing any evidence in
3 the case that somebody who is charged is guilty?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: You do.

6 THE PROSPECTIVE JUROR: I do.

7 THE COURT: All right. Let me have you step back.

8 (Prospective juror leaves sidebar.)

9 THE COURT: Okay. She'll be excused.

10 MR. BRAFMAN: Challenge for cause.

11 MS. KASULIS: No objection.

12 (Prospective juror joins sidebar.)

13 THE COURT: Ma'am, we're going to excuse you.

14 You're Juror No. 57. You will go downstairs to the jury room
15 and tell them you've been excused.

16 THE PROSPECTIVE JUROR: Thank you.

17 (Prospective juror excused.)

18 MR. BRAFMAN: Thank you, Judge.

19 (In open court.)

20 THE COURT: Were there any other hands up on the
21 first row?

22 Are you No. 60? Come on up.

23 (Sidebar continues; prospective juror joins.)

24 THE PROSPECTIVE JUROR: I'm 59, I'm sorry.

25 THE COURT: This is Juror 59. Thank you, sir.

Sidebar

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1 Welcome. What would you like to tell us?

2 THE PROSPECTIVE JUROR: I feel like he's guilty
3 already from watching the news. I can't miss that much time
4 from work. I'm going on vacation. So, I feel like --

5 THE COURT: We'll excuse you, sir.

6 Juror No. 59 is excused without objection?

7 MR. BRAFMAN: No objection.

8 MS. KASULIS: No objection.

9 THE COURT: Please go to the jury room and tell them
10 you've been excused.

11 (Prospective juror excused.)

12 (In open court.)

13 THE COURT: Was there anyone else on the first row?

14 Would you like to be heard, sir? Come on up.

15 (Sidebar continues; prospective juror joins.)

16 THE COURT: Hi, Juror No. 60. Come close and tell
17 us what your issues are.

18 THE PROSPECTIVE JUROR: One is I actually have a
19 trip planned -- it's booked already -- to see my grandparents.
20 I haven't seen them in years. That's one thing.

21 THE COURT: When is that scheduled?

22 THE PROSPECTIVE JUROR: For July.

23 THE COURT: And where is it?

24 THE PROSPECTIVE JUROR: It's international.

25 THE COURT: All right. And I take it you can't be

Sidebar

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1 flexible on the dates of your travel.

2 THE PROSPECTIVE JUROR: No. I actually booked this
3 a while ago.

4 THE COURT: They're nonrefundable tickets, non
5 changeable?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Is there any objection to excusing this
8 gentleman?

9 MR. BRAFMAN: No.

10 MS. KASULIS: No.

11 THE COURT: No. 60, please go back to the jury room
12 and tell them that you've been excused.

13 (Prospective juror excused.)

14 (In open court.)

15 THE COURT: Juror 61, did you have your hand up for
16 any reason?

17 If you would have answered yes to any of my
18 questions, your hand should be up, and we'll talk to you.

19 Ma'am, 61, come up.

20 (Sidebar continues; prospective juror joins.)

21 THE COURT: This is Juror 61. How are you, ma'am?

22 THE PROSPECTIVE JUROR: Very well.

23 THE COURT: What would you like to tell us about?

24 THE PROSPECTIVE JUROR: I have a preplanned vacation
25 scheduled for July 13 to 28. It's been planned since March.

Sidebar

441

1 THE COURT: Do you have tickets to go --

2 THE PROSPECTIVE JUROR: I have tickets, I have my
3 car rented, I have my --

4 THE COURT: All right. We will wish you a happy
5 vacation and thank you. We will excuse you.

6 (Prospective juror excused.)

7 THE COURT: Juror 61 is excused without objection.

8 MR. BRAFMAN: No objection.

9 MS. KASULIS: No objection.

10 (In open court.)

11 THE COURT: Juror No. 62, please come up.

12 (Sidebar continues; prospective juror joins.)

13 THE COURT: Yes, ma'am.

14 THE PROSPECTIVE JUROR: My only issue is I have a
15 vacation planned for August 17. I'm fine with everything else
16 if you guys think you'll be done by then. That's around
17 seven, seven and a half weeks. If it will go further than
18 that...

19 THE COURT: I don't have any reason to think --

20 THE PROSPECTIVE JUROR: That's my only question.

21 THE COURT: Otherwise, in terms of your ability to
22 serve for six weeks, you have the ability to be here?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Have you heard anything about
25 Mr. Shkreli or about this case?

Sidebar

442

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Thank you.

3 I asked the jurors to think about whether they would
4 want a juror with your state of mind to sit on a case
5 involving you or someone you loved or cared about.

6 Is there any reason you feel concern that given your
7 state of mind or anything that you are feeling or have views
8 upon that we should know about?

9 THE PROSPECTIVE JUROR: No.

10 THE COURT: We'll be asking further questions in a
11 moment, but thank you very much.

12 THE PROSPECTIVE JUROR: Okay.

13 (Prospective juror leaves sidebar.)

14 (In open court.)

15 THE COURT: Juror 63, come forward, please.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: Juror 63, yes, ma'am.

18 THE PROSPECTIVE JUROR: Due to personal experiences
19 before, I've dealt with fraud and scamming as well, and some
20 friends. So because of that, I feel I would be biased towards
21 the defendant in this case.

22 THE COURT: Towards or against?

23 THE PROSPECTIVE JUROR: I'm sorry, against.

24 THE COURT: In whatever direction it takes us, it's
25 not something --

Sidebar

443

1 THE PROSPECTIVE JUROR: Yes. I feel like I have to
2 let you know that.

3 THE COURT: And when you make that statement, are
4 you saying that if you could tell yourself and convince
5 yourself about the importance of a open and fair mind and the
6 importance of jurors in the system of justice, could you
7 commit to having an open mind and a fair mind for both sides
8 and listen to the evidence and decide the case based only on
9 evidence?

10 THE PROSPECTIVE JUROR: It would be a little hard
11 because that situation would be kept in the back of my mind
12 for sure, definitely.

13 THE COURT: Okay. Let me ask you to step back for
14 one moment.

15 (Prospective juror leaves sidebar.)

16 MR. BRAFMAN: Challenge for cause.

17 MS. KASULIS: No objection.

18 (Prospective juror joins sidebar.)

19 THE COURT: Ma'am, we'll excuse you. Juror 63,
20 please go down to the jury room and tell them you've been
21 excused, and they will give you paperwork.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Did Juror 64 have her hand up? Okay,
25 come up, ma'am.

Sidebar

444

1 (Sidebar continues; prospective juror joins.)

2 THE COURT: Come forward please, No. 64.

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Yes, ma'am.

5 THE PROSPECTIVE JUROR: I have an issue that is I
6 live far. It takes me two and a half hours to get here and I
7 don't even think I can make it on time. I was yesterday
8 10:30; today, I made it 9:30. Depending on the traffic, I
9 drive in, it's a major problem. So, that's issue number one.

10 As far as other concern, I'm opinionated and I do,
11 in fact, know about the case. I watch business channels and
12 I'm interested in that.

13 THE COURT: It's fine if you have formulated an
14 opinion having seen media reports. Most thinking people do
15 have opinions when we listen to the news, and that's fine.

16 The question for you is whether you could, if you're
17 selected as a juror, maintain a fair mind and open mind
18 towards both sides and not make any assumptions about the case
19 until you have heard all of the evidence and are then called
20 upon with your fellow jurors to deliberate.

21 Could you do that?

22 THE PROSPECTIVE JUROR: Well, I have certain bias
23 against corporate greed. It bothers me. So, I don't know.

24 THE COURT: Corporate greed is not being charged in
25 this case.

Sidebar

445

1 THE PROSPECTIVE JUROR: The case itself involves
2 that, all of that.

3 THE COURT: Well, it would be important for you to
4 maintain an open and fair mind to both sides.

5 THE PROSPECTIVE JUROR: I understand that. I'm not
6 sure I could do it.

7 THE COURT: Let me ask you to step back.

8 (Prospective juror leaves sidebar.)

9 MR. BRAFMAN: I think that's the basis for cause.

10 MS. KASULIS: No objection.

11 THE COURT: We'll dismiss Juror 64 for cause. Thank
12 you.

13 (Prospective juror joins sidebar.)

14 THE COURT: Ma'am, I'll ask you to go down to the
15 jury room and tell them you've been excused, and they'll give
16 you paperwork.

17 THE PROSPECTIVE JUROR: Thank you.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Did anyone else have their hand up?
21 Juror 65, okay.

22 (Prospective juror joins sidebar.)

23 THE COURT: Yes, ma'am. You are Juror 65?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Nice to see you. I just want to confirm

Sidebar

446

1 your name; that's you?

2 THE PROSPECTIVE JUROR: Correct.

3 THE COURT: What would you like to tell us?

4 THE PROSPECTIVE JUROR: I am a freelancer, so
5 definitely this would be very challenging for me, financially
6 speaking, not to be able to work that many weeks.

7 But beyond, I would be willing to make sacrifice, I
8 think this will be very interesting case; however, on July 10
9 I will have results to know whether or not I'm to have surgery
10 for this red spot here on my face. So if that happens -- I
11 wish I would have an answer now, but I won't know until
12 July 10.

13 THE COURT: All right. What we'll do, I'll ask you
14 to step back for a second, and we'll get right back to you.

15 (Prospective juror leaves sidebar.)

16 THE COURT: I would like to dismiss this juror.

17 MR. BRAFMAN: No objection.

18 MS. SMITH: No objection.

19 (Prospective juror joins sidebar.)

20 THE COURT: Ma'am, we're going to excuse you. I'd
21 ask you to please go down to the second floor where you
22 checked in and let them know you've been excused. And good
23 luck with everything.

24 THE PROSPECTIVE JUROR: Thank you.

25 (Prospective juror excused.)

Sidebar

447

1 (In open court.)

2 THE COURT: Juror 66, did you have a hand up? You
3 don't have to, but if you want to be heard I'm happy to hear
4 from you.

5 (Sidebar continues; prospective juror joins.)

6 THE COURT: Yes, ma'am. You're Juror 66? Step
7 close.

8 THE PROSPECTIVE JUROR: I have classes; therefore, I
9 won't be able to sit on the court.

10 THE COURT: When your are your classes?

11 THE PROSPECTIVE JUROR: They're evening classes,
12 Monday through Saturday.

13 THE COURT: When do they start?

14 THE PROSPECTIVE JUROR: Next week.

15 THE COURT: What time is your first class?

16 THE PROSPECTIVE JUROR: 6 p.m.

17 THE COURT: Okay.

18 THE PROSPECTIVE JUROR: 6 p.m. is for Monday through
19 Wednesday. And then Friday and Saturday from 9 a.m. to 4 p.m.

20 THE COURT: So every Friday your in class.

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Where are your classes held?

23 THE PROSPECTIVE JUROR: NYU, Washington Square.

24 THE COURT: Just across the bridge.

25 Let me ask you to step back.

Sidebar

448

1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: She's never going to get there by
3 6 p.m. And Friday all day --

4 THE COURT: If I adjourn on Fridays --

5 MR. BRAFMAN: She said 9 a.m. It's the whole day.

6 THE COURT: Okay. We'd have to not sit on Fridays,
7 which is not going to work out.

8 (Prospective juror joins sidebar.)

9 THE COURT: Ma'am, we will excuse you. I'd ask you
10 to go down to the jury room on the second floor where you
11 checked in and let them know you've been excused.

12 THE PROSPECTIVE JUROR: Thank you.

13 (Prospective juror excused.)

14 THE COURT: We're going to hear back from Juror 56.
15 Ma'am, come up.

16 THE PROSPECTIVE JUROR: On the first question, it's
17 covered.

18 THE COURT: You are covered.

19 THE PROSPECTIVE JUROR: Covered.

20 And the second question, it will be very hard for
21 the department not to be there and report during six weeks.
22 It's very difficult for her to substitute me because I am the
23 only one who knows the interface program and I'm needed to
24 finish the books; otherwise, it's going to be burdensome.

25 THE COURT: Let me ask you to step back, please.

Sidebar

449

1 (Prospective juror leaves sidebar.)

2 THE COURT: She will be paid but her department is
3 going to suffer. I think I would be inclined to excuse Juror
4 56 --

5 MR. BRAFMAN: No objection.

6 THE COURT: -- given her department's difficulties.
7 They have the year-end close -- well, actually she's closing
8 June 30 the books.

9 MR. AGNIFILO: I think I represented a relative of
10 hers. And the case was dismissed and sealed so I don't want
11 to say the name. I.

12 THE COURT: Okay.

13 MR. AGNIFILO: Suppose we could say the first name.

14 MR. BRAFMAN: I don't want to embarrass her.

15 MR. AGNIFILO: No, I know.

16 THE COURT: So you think you know her, you've met
17 her?

18 MR. AGNIFILO: I'm not sure. But the person that I
19 represented has the same last name from the same town and it
20 would be around the same age. It could be her husband.

21 MR. BRAFMAN: It's a unique name.

22 MR. AGNIFILO: But I'm not sure, I'm really not
23 sure.

24 THE COURT: We have a question in our voir dire, so
25 I can just ask it now.

Sidebar

450

1 (Prospective juror joins sidebar.)

2 THE COURT: Ma'am, have you or any relative or close
3 friend ever had an encounter with the criminal justice system
4 either as victim, defendant, witness, or anything else?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: Have you or any friend or relative ever
7 been represented by an attorney in a criminal case?

8 THE PROSPECTIVE JUROR: Not that I recall.

9 THE COURT: Thank you. Let me ask you to step back
10 one more time.

11 (Prospective juror leaves sidebar.)

12 THE COURT: So that issue is put to rest.

13 Now the question is whether her employer, given
14 their need for her services, is going to suffer undue hardship
15 if she serves. I'm going to ask whether this year-end closure
16 can be accomplished by someone else over the next few days; if
17 so, we can have her sit, I think.

18 (Prospective juror joins sidebar.)

19 THE COURT: You said the year end closes on June 30,
20 which is this Friday.

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: So it's only a matter of --

23 THE PROSPECTIVE JUROR: Well, after that to close
24 the year.

25 THE COURT: Does that have to be done by a certain

Sidebar

451

1 time?

2 THE PROSPECTIVE JUROR: Yes, July 20. And then
3 there are some other things by August 15.

4 Actually, as I mentioned, if you can take me after
5 September, you can keep my for six months. Right now, it's
6 very --

7 THE COURT: Understood. I think under the
8 circumstances I will excuse you and ask you to please go
9 downstairs to the second floor and tell them you've been
10 excused. Juror No. 56, I want to thank you for your efforts.

11 THE PROSPECTIVE JUROR: Thank you very much.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Did anyone else -- come up, ma'am.

15 (Prospective juror joins sidebar.)

16 THE COURT: Can you give us your number?

17 THE PROSPECTIVE JUROR: 67.

18 THE COURT: Thank you, ma'am. Yes, ma'am?

19 THE PROSPECTIVE JUROR: I just don't have the time.

20 Six weeks, my work won't allow me to stay away.

21 THE COURT: What do you do?

22 THE PROSPECTIVE JUROR: I do contracting for a
23 travel company and have deadlines coming up.

24 I would love to but I can't.

25 THE COURT: Is it because there's no one else at

Sidebar

452

1 your job --

2 THE PROSPECTIVE JUROR: I'm the only one who does my
3 specific position. It's just one.

4 THE COURT: Nobody else knows how to do it?

5 THE PROSPECTIVE JUROR: No. There's the operation
6 things, but nobody does the contracting and proposals.

7 THE COURT: Is there any way you could do your job
8 in the evenings or on weekends?

9 THE PROSPECTIVE JUROR: I have to check. I have to
10 check with personnel.

11 THE COURT: Would you be paid to serve on the jury?
12 Does your employer pay you?

13 THE PROSPECTIVE JUROR: I have no clue. I don't
14 think anyone has been called, so I have no idea.

15 THE COURT: I'll ask you to please retrieve your
16 phone and come back when you have an answer. You would ask
17 your employer whether, A, you would be paid for six-week jury
18 service; and, two, whether there's anyone else that could be
19 deployed to help, and, if not, whether you can work in the
20 evenings or weekends to do your job.

21 THE PROSPECTIVE JUROR: Okay.

22 THE COURT: Thank you.

23 THE PROSPECTIVE JUROR: You want me to do now?

24 THE COURT: Yes, go use your phone and we will ask
25 you to come back. Thank you.

LAM

OCR

RPR

Sidebar

453

1 (Prospective juror leaves sidebar.)

2 THE COURT: Anyone else?

3 Juror No. 68, come on up.

4 (Sidebar continues; prospective juror joins.)

5 THE COURT: Hi, how are you?

6 THE PROSPECTIVE JUROR: Good, thanks.

7 THE COURT: Yes, ma'am.

8 THE PROSPECTIVE JUROR: My concern is how long the
9 case might be because I have a booked trip August 2 to go out
10 of the United States. So, that's my concern.

11 I feel like I'm an unbiased juror, I don't watch the
12 news, so I didn't really know anything about this. So, that's
13 my concern.

14 THE COURT: I think that we can't guarantee
15 100 percent that this will be over by August 2. In fact --

16 THE PROSPECTIVE JUROR: I feel it will go longer
17 than that just being -- it's how I feel.

18 THE COURT: It sometimes goes less than they predict
19 and sometimes longer.

20 THE PROSPECTIVE JUROR: If it was less, that would
21 be great.

22 THE COURT: I don't want to guarantee that by
23 August 2 we'd be finished. And I don't want you distracted by
24 the thought of your trip versus paying attention to what's
25 happening at the trial.

Sidebar

454

1 THE PROSPECTIVE JUROR: That wouldn't distract me.
2 That's not a distraction; I know myself.

3 But like I said, that's my only concern.

4 THE COURT: Let me ask you to step back for one
5 second.

6 (Prospective juror leaves sidebar.)

7 THE COURT: I don't know how long this case is going
8 to take. The question is whether if we lost her the week of
9 August 2 whether -- we'll have six backups, but...

10 MR. BRAFMAN: We do have six alternatives, Judge.

11 THE COURT: Right. And they will all be paying
12 attention. My practice is not to tell them they are
13 alternates just so that they maintain their attention.

14 Can I ask you not to report that, please?

15 THE NEWS REPORTER: Sure.

16 THE COURT: So, I think I'm going to ask her to
17 stay; is that all right?

18 MR. BRAFMAN: Yes.

19 (Prospective juror joins sidebar.)

20 THE COURT: Ma'am, we will try our best to get this
21 finished. And if August 2 starts to approach, we will deal
22 with your vacation. We are not going to prevent you from
23 going on vacation.

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: So, you can maintain your seat.

Sidebar

455

1 THE PROSPECTIVE JUROR: Thank you.

2 (Prospective juror leaves sidebar.)

3 (In open court.)

4 THE COURT: No. 69, come on up, please.

5 (Sidebar continues; prospective juror joins.)

6 THE COURT: Hello. Come on up. You're No. 69, this
7 is your name?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Come up. We're happy to hear from you
10 about any answers you had to our questions.

11 THE PROSPECTIVE JUROR: I have to work.

12 THE COURT: Where do you work? Not the name of your
13 employer, but what kind of work do you do?

14 THE PROSPECTIVE JUROR: Freight forwarding company
15 in Jamaica.

16 THE COURT: Does your company pay you to be on jury
17 duty?

18 THE PROSPECTIVE JUROR: Just one or two days.

19 THE COURT: One or two days only. All right.

20 And is your job flexible with your hours so that you
21 could do your freight forwarding work after 5:30 and during
22 the weekends?

23 THE PROSPECTIVE JUROR: No, because this is regular
24 hours, every day, and I'm not allowed to do part work or
25 weekend.

LAM

OCR

RPR

Sidebar

456

1 THE COURT: You have to be in the office to do your
2 work?

3 THE PROSPECTIVE JUROR: Yes, every day.

4 THE COURT: Step back, please.

5 (Prospective juror leaves sidebar.)

6 MR. BRAFMAN: No objection.

7 MS. KASULIS: No objection.

8 THE COURT: Thank you.

9 (Prospective juror joins sidebar.)

10 THE COURT: Ma'am, we'll excuse you and ask you to
11 go back to the second floor where you checked in this morning
12 and tell them you've been excused. Thank you.

13 (Prospective juror excused.)

14 THE COURT: Juror 49 is going to come with an
15 answer.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: No. 49, welcome back. What do you have
18 to tell us?

19 THE PROSPECTIVE JUROR: I must be present at my job
20 for production. My income is mostly based on my performance,
21 and missing work for a lot of days I could risk losing my job.

22 THE COURT: We don't want you to risk losing your
23 job. I will excuse you. Just tell them on the second floor
24 in the jury room that you've been excused. They will give you
25 your paperwork.

Sidebar

457

1 THE PROSPECTIVE JUROR: Thank you.

2 (Prospective juror excused.)

3 THE COURT: 49 is excused, any objection?

4 MR. BRAFMAN: No.

5 MS. KASULIS: No.

6 THE COURT: That's it. The question is whether we
7 have enough to proceed.

8 THE COURTROOM DEPUTY: I believe we have 63 in
9 total.

10 THE COURT: Are we excluding -- there were two from
11 yesterday, one of whom had a doctor's appointment and is
12 coming in at 1. I think he's been directed to come back. One
13 was working, had just started a job. She was doing training,
14 she was three weeks on the job, and she was going to check
15 with her employer.

16 What happened to that juror, the one in training? I
17 think, Vivek, you were talking to her.

18 THE LAW CLERK: She was supposed to come back today
19 to report in.

20 THE COURT: Do you remember her number?

21 THE LAW CLERK: Yes, I do.

22 THE COURTROOM DEPUTY: Was it 147 or 148?

23 THE LAW CLERK: I believe 148.

24 MS. SMITH: 148.

25 THE COURT: Is she here? Are they both here?

Sidebar

458

1 The question is whether we have enough to continue
2 with our voir dire. We have a total of how many, Sandra?

3 THE COURTROOM DEPUTY: We should have 63.

4 THE COURT: 63 total?

5 THE COURTROOM DEPUTY: Yes.

6 THE COURT: Does that feel like a sufficient number?

7 MR. BRAFMAN: It should be.

8 THE COURT: We may lose additional who say I have
9 law enforcement in my family and can't be objective, that kind
10 of thing.

11 MS. KASULIS: Are you going to review for the pool
12 that we have from yesterday the issue about seeing the Post?

13 THE COURT: Yes, we will. Let me make sure they
14 come up separately. Maybe I should just address all of them,
15 though, because some of these jurors didn't raise their hand
16 but we didn't actually focus on that. So, let's keep those
17 folks here. We will bring back everybody from yesterday.

18 MR. BRAFMAN: Now or after lunch?

19 THE COURT: Do you mind if we don't take lunch?
20 Seriously, I don't want to deny you lunch if you need to eat.

21 MR. BRAFMAN: It's not a question of lunch. I could
22 use a break. If we could take a break for half-hour, I would
23 like to grab something to eat and I do need to make some
24 calls.

25 THE COURT: Ms. Jackson, there's a request for a

1 30-minute break.

2 So, we'll take a 30-minute break.

3 MR. BRAFMAN: Thank you.

4 THE COURT: Let me just admonish the jurors and I'll
5 ask them to come back to the jury room, we'll grab everybody,
6 put them in some kind of order, and bring them back. Thank
7 you.

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9 (Continued on next page.)

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1 (In open court.)

2 THE COURT: Thank you for your attention. The three
3 jurors who are here, we are going to take a half-hour break.
4 At the conclusion of that 30 minutes, if you could please
5 report to the jury room on the second floor at 1:15. We will
6 then bring everybody back up to continue questioning.

7 In the meantime, please do not read any media
8 reports about this case. Don't do any research on your own.
9 If you get a pop-up about this case, disregard it. Don't read
10 any papers. If you see something with a photograph with Mr.
11 Shkreli, ignore it, please. Don't look at it. Don't allow
12 anyone to speak to you about the case. Don't even speak about
13 it among yourselves. I would ask you to please go back to the
14 jury room until 1:15. In the meantime, you can retrieve your
15 phones. There is a cafeteria on the second floor. You can go
16 to the snack bar on the ground floor. Thank you very much for
17 your patience. I appreciate it.

18 (Prospective Jurors exit the courtroom.)

19 THE COURT: Please be back here by 1:15, no later.

20 Yes, Ms. Kasulis.

21 MS. KASULIS: Your Honor, for scheduling, we have
22 witnesses who have been scheduled to come in perhaps this
23 afternoon. We have been talking and with the pace of our jury
24 selection, we could potentially get to openings today, but we
25 were talking about perhaps having a first witness come

1 tomorrow morning to start the day with the first witness
2 instead of having witnesses come.

3 THE COURT: I think that might work out best because
4 I am up to question two or three. That is how far we have
5 gotten. I have another dozen or so.

6 MR. BRAFMAN: I think we agree on this, Judge,
7 subject to Your Honor's approval.

8 THE COURT: One other thing, Mr. Brafman, hearing
9 what you have heard so far about the jurors and their exposure
10 to the media coverage, do you have ongoing concerns? We
11 haven't yet heard from the folks from yesterday.

12 MR. BRAFMAN: I have just ongoing concern as to the
13 panel we already picked because they were sitting jurors that
14 they referenced in the article. I would ask the Court to do
15 an inquiry of those people, but I'm not looking to belabor the
16 issue.

17 THE COURT: What I was proposing to do is bring all
18 of the jurors back. We will ask everybody about that and we
19 will see what their answers are.

20 MR. BRAFMAN: That is fine, Judge.

21 THE COURT: Thank you. May I just address any
22 sketch artist who may have drawn pictures of jurors' faces.
23 That was prohibited by my order. So if you have drawn jurors'
24 faces or any other identifying features, I would ask you,
25 please, those not be published. It is important to protect

1 the jurors' ability to be candid during voir dire. I don't
2 know whether that happened. But if it did happen, I ask you
3 to refrain and not publish pictures of jurors' faces.

4 Thank you.

5 MS. KASULIS: Thank you, Your Honor.

6 (Lunch recess.)

7 AFTERNOON SESSION

8 (In open court; prospective jurors not present.)

9 THE COURT: We thought it would be a good idea to
10 have a sidebar with the lawyers to make sure there are lists
11 of current jurors in our pool are consistent with your list
12 shows. If you want to come up here. We will speak with our
13 court reporter present and make sure that we all are on the
14 same page.

15 (Continued on next page.)

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9	[REDACTED]	
10	[REDACTED]	
11	[REDACTED]	
12	[REDACTED]	
13	[REDACTED]	
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22	[REDACTED]	
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24	[REDACTED]	
25	[REDACTED]	

Sealed by Order of the Court		466
1	[REDACTED]	
2	[REDACTED]	
3	[REDACTED]	
4	[REDACTED]	
5	[REDACTED]	
6	[REDACTED]	
7	[REDACTED]	
8	[REDACTED]	
9	[REDACTED]	
10	[REDACTED]	
11	[REDACTED]	
12	[REDACTED]	
13	[REDACTED]	
14	[REDACTED]	
15	[REDACTED]	
16	[REDACTED]	
17	[REDACTED]	
18	[REDACTED]	
19	[REDACTED]	
20	[REDACTED]	
21	[REDACTED]	
22	[REDACTED]	
23	[REDACTED]	
24	[REDACTED]	
25	[REDACTED]	

Sealed by Order of the Court

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[REDACTED]
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[REDACTED]
[REDACTED]

1 (The following occurred at sidebar; prospective
2 juror present.)

3 THE COURT: We are handing out a slight correction.
4 We omitted one juror. And also those who were sort of up in
5 the air, we put at the end of the list.

6 We can take the old ones.

7 Counsel, we brought two jurors back from today and
8 yesterday who had to check with their employers regarding
9 certain issues, and I thought we can address their answers at
10 sidebar just to make sure that we can tell them now whether
11 they are going to stay or be excused. So the two that we have
12 back, first of all, is Juror number -- are you --

13 THE PROSPECTIVE JUROR: 67.

14 THE COURT: Let me just get your name. Give me your
15 number. Let me confirm who you are.

16 Thank you.

17 (Pause.)

18 THE COURT: We have made a revised list as of today
19 based on just renumbering all of the jurors. This juror is
20 now number 62 on our list. She had issues regarding training
21 at a new job; is that correct?

22 THE PROSPECTIVE JUROR: Correct.

23 THE COURT: We wanted you to go back and find out
24 what your employer's requirements would be.

25 THE PROSPECTIVE JUROR: My employers will pay me for

1 jury duty. I did explain to them the time frame, it is you
2 have to because I have on the job situation with training at
3 this time.

4 THE COURT: Did your employer allow you to
5 reschedule your training for some other date?

6 THE PROSPECTIVE JUROR: It is based on a contract
7 that is signed where the training is on the job at the moment.
8 If I wait six weeks, I may not get the same training, so it
9 puts me behind.

10 THE COURT: There is no training you can do online?

11 THE PROSPECTIVE JUROR: The training that I have
12 done online, I completed that, so now I am actually working
13 with someone.

14 THE COURT: What is the nature of the work that you
15 are doing?

16 THE PROSPECTIVE JUROR: So my company provides
17 facility management services for new contracts and we signed
18 the new contract, so they are doing the transition now during
19 this time period.

20 THE COURT: So at this time currently there is
21 on-the-job training?

22 THE PROSPECTIVE JUROR: Correct.

23 THE COURT: What are the consequences if you don't
24 do your on-the-job training now?

25 THE PROSPECTIVE JUROR: I will be behind and I will

1 be -- well, it was affect my being independents on my own,
2 doing my job independently for my employer.

3 THE COURT: Will it result in any decrease in your
4 pay?

5 THE PROSPECTIVE JUROR: No decrease in pay.

6 THE COURT: Are you paid a salary.

7 THE PROSPECTIVE JUROR: Salary.

8 THE COURT: All right. Let me ask you to step aside
9 for just a moment, please.

10 (Prospective juror leaves sidebar.)

11 MR. BRAFMAN: Could you ask if she could give us her
12 undivided attention during the period she is required to serve
13 or whether that will serve as a distraction because she's
14 worried about missing the training.

15 THE COURT: All right. Are there any questions that
16 the Government would like?

17 MS. KASULIS: We would -- it sounds like it doesn't
18 affect her pay, a promotional track or anything along those
19 lines. It sounds like it is not a -- it sounds like she's not
20 going to be sort of independent in her job until six weeks. I
21 am fine if Mr. Brafman is fine.

22 (Prospective juror present at sidebar.)

23 THE COURT: It is important that jurors give the
24 case and the evidence undivided attention and be able to focus
25 and to observe the demeanors of witnesses. So the question

1 for you is whether you would be able to do that given what you
2 have described as your situation?

3 THE PROSPECTIVE JUROR: I honestly don't think I
4 would be focused because I would be concerned about what's
5 going on personally and being behind.

6 THE COURT: At your job?

7 THE PROSPECTIVE JUROR: Correct.

8 THE COURT: Is there some benefit financially or
9 otherwise in terms of promotional opportunities that you would
10 have if you had the training now as opposed to later?

11 THE PROSPECTIVE JUROR: Correct. I would be
12 entitled to a bonus or promotional opportunities.

13 THE COURT: Do you know roughly what the bonus is?

14 THE PROSPECTIVE JUROR: It is about 20 percent of
15 your salary.

16 THE COURT: That's based on what metrics?

17 THE PROSPECTIVE JUROR: Performance.

18 THE COURT: Okay. All right. Thank you. Let me
19 ask you to step back one more time.

20 (Prospective juror leaves sidebar.)

21 THE COURT: I think we have been pretty generous
22 with other jurors. I think we should let her go. She has
23 followed and demonstrated good faith. Any objection?

24 MR. BRAFMAN: I agree.

25 MS. KASULIS: No objection.

1 (Prospective juror present at sidebar.)

2 THE COURT: Ma'am, we are going to excuse you and
3 thank you for your diligent follow up. You can tell the jury
4 clerk that you have been excused.

5 THE PROSPECTIVE JUROR: Thank you.

6 (Prospective juror excused.)

7 THE COURT: Ma'am, come on up.

8 (Prospective juror present at sidebar.)

9 (Continued on next page.)

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1 (Side bar continues; prospective juror joins.)

2 THE COURT: First, you are going to tell us your
3 number from yesterday, if you remember it, and then we are
4 going to talk about your number on the revised list which is
5 now 64.

6 THE PROSPECTIVE JUROR: Sixty-seven was my previous
7 one.

8 THE COURT: So we're doing some follow-up questions
9 or investigation with your employer, correct?

10 THE PROSPECTIVE JUROR: Yes. In fact, they've never
11 had a situation like this, so they were not really available
12 to do that but just because they'll work with me on this at
13 all, I do decide to go with the selection process here.

14 THE COURT: Well, we decide whether you go with the
15 selection process.

16 THE PROSPECTIVE JUROR: I mean, if I go through it.
17 That's what I meant.

18 THE COURT: So, ma'am, this is the thing. One, you
19 will be paid during jury service, is that correct?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: And, two, your employer will allow you
22 to be flexible to work during other hours, if necessary?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: To stay up to speed?

25 THE PROSPECTIVE JUROR: Uh-huh.

Side Bar

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1 THE COURT: All right. And, yes. Okay. Well,
2 thank you. I appreciate your follow up. Let me just ask you
3 to step back for one second, please.

4 THE PROSPECTIVE JUROR: Sure.

5 THE COURT: Thank you.

6 (Prospective juror leaves side bar.)

7 THE COURT: This is Juror Number 64. I think she's
8 qualified.

9 MR. BRAFMAN: I'm impressed.

10 MS. KASULIS: Yes.

11 (Prospective juror joins side bar.)

12 THE COURT: Ma'am, we will ask you to start with the
13 panel and we appreciate your patience. We would like you to
14 complete the selection process and see where that leaves you
15 at the end of the day.

16 THE PROSPECTIVE JUROR: All right.

17 THE COURT: All right. Thank you.

18 So, I'm thinking that maybe, unless there is
19 something else we need to address regarding the list, we can
20 probably bring the other jurors up.

21 MS. KASULIS: Let me check with Ms. Smith.

22 THE COURT: Do you have the list?

23 MR. AGNIFILIO: Almost there.

24 THE COURT: So now what I'd like you do. Are your
25 things upstairs?

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1 THE PROSPECTIVE JUROR: No, it's there.

2 THE COURT: If you mind sitting tight and we will
3 redirect to you a seat. Okay. Thank you. All right.

4 MS. KASULIS: Thank you, Judge.

5 (In open court; side bar ends.)

6 (Pause.)

7 MR. AGNIFILIO: We are ready.

8 THE COURT: Did everything check out? Is your list
9 consistent with ours?

10 MR. AGNIFILIO: Yes.

11 MS. KASULIS: Yes.

12 THE COURT: Just for the record, we made a few
13 changes. The list ends with Juror 62, who was Juror 64 on the
14 Court's revised list of today.

15 MR. BRAFMAN: Number 63, is it?

16 THE COURT: Okay. We have excused 62. Juror 63 did
17 not show up so the person who was Juror 64 has been moved up
18 to seat 62.

19 MR. BRAFMAN: Thank you.

20 THE COURT: And she is the woman in the courtroom.

21 All right. We are in the process of assembling the
22 jurors and we will have them come back in and resume voir
23 dire.

24 (Pause.)

25 (Prospective jurors enter.)

1 THE COURT: All right. Please be seated.

2 Good afternoon. I want to thank all of the jurors
3 for their ongoing patience and for returning to court and to
4 continue this process with us. I remind you all that you are
5 still under oath.

6 I would like to ask whether any of you have seen,
7 since yesterday or today any media reports about this case or
8 concerning Mr. Shkreli? I know that I have asked you to try
9 to avoid such reports and do not read such reports, but I
10 wanted to make sure that if somebody has seen something, that
11 we learn about it and also learn whether that exposure any
12 media reports may have affected your state of mind.

13 So, if anyone has seen something since yesterday or
14 today or ever that has affected their ability to consider this
15 case and the evidence in a fair and open-minded way to both
16 sides, I would like to know and see any hands raised.

17 Is there anybody here? No.

18 Did we have a hand up? This is juror --

19 THE PROSPECTIVE JUROR: -- 21.

20 THE COURT: All right.

21 THE PROSPECTIVE JUROR: Your Honor. I accidentally
22 overheard a radio commentary.

23 THE COURT: What we will do is talk to you at side
24 bar.

25 THE PROSPECTIVE JUROR: Yes.

Side Bar

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1 THE COURT: I am sorry to inconvenience your
2 colleagues in your row, but you will have to see me at side
3 bar.

4 Juror 21, please come down.

5 (The following occurred at side bar; prospective
6 juror joins.)

7 THE PROSPECTIVE JUROR: Yes, Your Honor.

8 THE COURT: Are you this individual?

9 THE PROSPECTIVE JUROR: Yes, that's me.

10 THE COURT: Come forward, please.

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. Sir, you saw you heard
13 something on the radio?

14 THE PROSPECTIVE JUROR: Yes, a brief commentary the
15 fact that the defendant involved in the situation of the
16 conspiracy nature and that people were calling him a snake.

17 THE COURT: Okay. All right. Please.

18 THE PROSPECTIVE JUROR: Derogatory remarks.

19 THE COURT: The media reports, I understand this is
20 an accidental hearing on your part, but would that, hearing
21 that affect your ability to keep an open mind and to evaluate
22 only the evidence in this case and assessing the evidence and
23 deciding the facts in dispute?

24 THE PROSPECTIVE JUROR: I'm afraid it might put more
25 bias on my nature, more, you know, it's hard for me to come to

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Side Bar

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1 a balanced discussion of the evidence.

2 THE COURT: I beg your pardon?

3 THE PROSPECTIVE JUROR: It would be hard for me to
4 come to a balanced discussion of the evidence, yes.

5 THE COURT: Let me be clear. What has been reported
6 in the media was not among people who are still in this room.
7 As we went through the examination process yesterday, if you
8 jurors expressed those types of sentiments, they were
9 dismissed because we wanted to make sure that both sides have
10 jurors with a fair state of mind, an impartial state of mind.

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: So we would not be -- if you were
13 selected, there would not be other jurors as far as we know
14 who shared those viewpoints. They have been excused.

15 THE PROSPECTIVE JUROR: But I just, I'm afraid that
16 that might interfere. Plus, I have hypertension. If my blood
17 pressure goes up, would I be able to adjust with the proper
18 thinking ability.

19 THE COURT: All right. So you have some health
20 issues and you're under the care of a doctor?

21 THE PROSPECTIVE JUROR: Yes. I take a very high
22 dosage of this.

23 THE COURT: Okay. Well, I wouldn't want you to be
24 affected by jury service.

25 THE PROSPECTIVE JUROR: Thank you.

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Side Bar

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1 THE COURT: Let me ask you to step back, please.

2 (Prospective juror leaves side bar.)

3 MR. BRAFMAN: We challenge him for cause, Your

4 Honor.

5 MS. KASULIS: Yes.

6 THE COURT: We will excuse him.

7 MS. SMITH: Yes.

8 THE COURT: We will excuse Juror 21 for cause.

9 (Prospective juror joins side bar.)

10 THE COURT: Sir, we are going to excuse you. We
11 will ask you to go down to the jury room and check in and let
12 them know you have been excused.

13 THE PROSPECTIVE JUROR: Yes, ma'am.

14 THE COURT: All right. Thank you. Be well.

15 (Prospective juror excused.)

16 MR. BRAFMAN: There was another person who had a
17 hand up.

18 (In open court.)

19 THE COURT: Is there another person who had their
20 hand up?

21 What is your number, ma'am?

22 THE PROSPECTIVE JUROR: 28.

23 THE COURT: 28, come forward, please.

24 (Side bar continues; prospective juror joins.)

25 THE COURT: Come forward, please.

Side Bar

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1 THE PROSPECTIVE JUROR: Hi.

2 THE COURT: What did you hear?

3 THE PROSPECTIVE JUROR: I avoided stuff but on the
4 way home yesterday on the train, someone was holding a paper.
5 It was the cover of the New York Post. When I see things, I
6 read them. So it was about other people being sent home and
7 most were sent home because they called him a snake.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: That's -- I'm trying to
10 erase that from my head.

11 THE COURT: Okay. Well, the question for you is
12 having seen that, would you be able to consider the evidence
13 in this case with a fair and impartial state of mind to both
14 sides in the dispute?

15 THE PROSPECTIVE JUROR: I think that I can. I just
16 wanted you to be aware.

17 THE COURT: No. I appreciate that. The important
18 thing is it's hard.

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: We have radio reports. I know that you
21 tried very hard.

22 THE PROSPECTIVE JUROR: I did. I watched "The
23 Bachelorette" and went to bed. It was terrible.

24 THE COURT: Despite our best efforts, I appreciate
25 your best efforts, sometimes we're all exposed. So, the

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Side Bar

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1 question is do you --

2 THE PROSPECTIVE JUROR: It was, like, hello.

3 THE COURT: Yes.

4 THE PROSPECTIVE JUROR: I recognized it.

5 THE COURT: All right. So, could you nonetheless
6 evaluate the evidence and decide this case based only on the
7 evidence at trial?

8 THE PROSPECTIVE JUROR: I'll do my best to do that.

9 THE COURT: Well, is there a concern? Do you have
10 any concerns?

11 THE PROSPECTIVE JUROR: No. No, I don't.

12 THE COURT: All right. The media reports certain
13 highlights, but those individuals were excused because they
14 weren't demonstrating a commitment to fairness and
15 impartiality and the question for you is --

16 THE PROSPECTIVE JUROR: Yes, I did.

17 THE COURT: You can?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. Ma'am.

20 THE PROSPECTIVE JUROR: I'm a good honest person.

21 THE COURT: Juror Number 28, we thank you for your
22 candor. Please step back for a moment.

23 (Prospective juror leaves side bar.)

24 MR. BRAFMAN: Let me note for the record that the
25 headline she's referring to didn't come out until this

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Side Bar

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1 morning.

2 THE COURT: Whatever, she saw it.

3 THE PROSPECTIVE JUROR: But she couldn't have seen
4 it on the way home last night which concerns me as to whether
5 this juror is being completely candid.

6 MS. SMITH: There was an article not in the
7 newspaper, but it came out actually before we left the
8 courthouse yesterday.

9 MR. BRAFMAN: Online.

10 MS. SMITH: No, I know.

11 MR. BRAFMAN: But the newspaper she's talking about
12 is the New York Post.

13 THE COURT: So what would you like me to ask her
14 whether she saw it, last night or this morning?

15 MR. BRAFMAN: Whether she saw it last night or this
16 morning.

17 THE COURT: All right. Okay.

18 MS. KASULIS: Clarify with respect to the cover, did
19 the cover have "snake" on it?

20 THE COURT: No.

21 (Prospective juror joins side bar.)

22 THE COURT: Ma'am, when you said you saw a headline
23 in the New York Post, was it last night or this morning?

24 THE PROSPECTIVE JUROR: I have short-term memory.
25 I'm a cancer survivor. I had a brain tumor. I can't tell you

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Side Bar

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1 whether it was this morning or last night. I think.

2 THE COURT: Did you take the train --

3 THE PROSPECTIVE JUROR: I think it was last night
4 coming home on the train from Atlantic Terminal to Jamaica. I
5 think that's when it happened.

6 THE COURT: All right. Do you recall as best you
7 can what the headline was?

8 THE PROSPECTIVE JUROR: It started with "100" and
9 ended with "jurors," I believe.

10 THE COURT: All right. And you said there was
11 mention of a snake?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Where did you see that?

14 THE PROSPECTIVE JUROR: I think that was on the
15 side.

16 THE COURT: On the front page?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Would you kindly step back?

19 THE PROSPECTIVE JUROR: Absolutely.

20 (Prospective juror leaves side bar.)

21 MR. BRAFMAN: Well, look, Your Honor, fortunately, I
22 have the newspaper there. She's said that she saw it.

23 Inside, it said "snake." The headline doesn't say "snake."

24 THE COURT: She had a brain tumor so --

25 MR. BRAFMAN: What?

Side Bar

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1 THE COURT: She had a brain tumor so she doesn't
2 have great short-term memory. That might be a problem.

3 MS. SMITH: Yes. Yes.

4 THE COURT: That might be a reason to excuse her.

5 MR. BRAFMAN: Yes.

6 THE COURT: Both sides agree.

7 (Prospective juror joins side bar.)

8 THE COURT: Ma'am, we are going to excuse you.

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: If you can go down to the second floor.
11 We will ask you just to tell them you have been excused and
12 you will get your papers.

13 THE PROSPECTIVE JUROR: Okay. Thank you. Thank
14 you.

15 THE COURT: Thank you.

16 (Prospective juror excused.)

17 MR. BRAFMAN: Thank you, Judge.

18 We have a suggestion.

19 MR. AGNIFILIO: May I make a suggestion? I wonder,
20 because the way Your Honor phrased it which I understand, is
21 you said, I gave you an admonition not to, but if anyone did,
22 and by looking at the jury, even the one who raised his hand
23 didn't know whether to raise his hand. So I'm hoping, I'm
24 asking if you could -- so there's nothing wrong with it
25 really, just assure them there's nothing wrong that they saw.

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1 I'm afraid they think it's wrong saw something because how
2 could they not?

3 THE COURT: Yes.

4 MR. AGNIFILIO: And they're afraid to raise their
5 hand because they don't want to do something wrong.

6 THE COURT: Just for the record, I was using words
7 suggested by your colleague. Thank you for complying with my
8 admonition. All right?

9 MR. AGNIFILIO: Right.

10 THE COURT: So, I'm sorry if you think that was
11 chilling, but I am going to rephrase. Why don't you two
12 figure out what you want me to say because once I say it, I've
13 said it. All right?

14 MR. BRAFMAN: I agree I've asked you to say it.

15 THE COURT: Yes, you did.

16 MR. BRAFMAN: But what's happened is, despite
17 whether there's an avalanche of publicity, out of 62 people,
18 two people raised their hands.

19 THE COURT: I understand.

20 MR. BRAFMAN: I think the concern is they're afraid
21 to say yes, thinking they violated the oath or law.

22 THE COURT: Well, I will assure them that their
23 candor is more important at this time.

24 MR. BRAFMAN: Thank you.

25 THE COURT: And I'm not faulting them for having

1 been exposed.

2 MR. BRAFMAN: Thank you, Judge.

3 THE COURT: Just a moment. Let's turn off the white
4 noise for one second.

5 (In open court.)

6 THE COURT: I want to assure all of you that it is
7 possible that you were exposed. By letting me know if you did
8 hear or read something inadvertently, the Court does not want
9 you to feel that you did anything wrong. Really what we need
10 to explore is whether, one, you heard anything or listened to
11 anything about this case inadvertently and whether that had
12 any effect on your ability to sit as fair-minded and impartial
13 jurors throughout this case.

14 So, the important question is did you hear or see or
15 read anything about this case and if so, what is the effect of
16 that exposure on your ability to sit as a fair and impartial
17 juror.

18 Now, I saw Juror Number 6. You did? Okay, come on
19 up, ma'am. Thank you.

20 (Side bar continues; prospective juror joins.)

21 THE COURT: Yes, ma'am. You are Juror Number 6?

22 THE PROSPECTIVE JUROR: Yes. Yes.

23 THE COURT: What would you like to tell us? What
24 did you see or hear?

25 THE PROSPECTIVE JUROR: I see the front page.

1 THE COURT: You saw the front page?

2 THE PROSPECTIVE JUROR: Yes, and I remember the
3 news.

4 THE COURT: Come close. Don't be nervous.

5 THE PROSPECTIVE JUROR: About the part, the thing
6 about the allergy medication jump 400 percent, and that, and I
7 put everything in my mind and I'm career, I'm a nurse.

8 THE COURT: You're what?

9 THE PROSPECTIVE JUROR: My career is nursing. It
10 affect my ability.

11 THE COURT: So you saw something recently?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: And you started to remember past
14 reports?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: And you're a nurse?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: And putting those reports together,
19 combined with your career --

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: -- could you decide with an open mind
22 and with a fair mind the evidence in this case?

23 THE PROSPECTIVE JUROR: It is my career to take care
24 of patients.

25 THE COURT: To take care of patients?

Side Bar

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1 THE PROSPECTIVE JUROR: Yes. And I work hard for
2 them.

3 THE COURT: You work hard for them. Well, I have no
4 doubt that you do, but the question is whether you would
5 commit yourself to listen to the evidence with a fair and open
6 mind. Could you do that?

7 THE PROSPECTIVE JUROR: I'm not sure because this is
8 in my mind since last year.

9 THE COURT: This is what?

10 THE PROSPECTIVE JUROR: This case, before I come the
11 case, the name is in my mind from last year.

12 THE COURT: Okay.

13 THE PROSPECTIVE JUROR: That -- what the people who
14 do it, to harm the weak person, elderly, children, and my
15 colleague in field.

16 THE COURT: I understand. All right. Let me ask
17 you to step back a moment.

18 (Prospective juror leaves side bar.)

19 MR. BRAFMAN: We consent. She's almost in tears.

20 MS. SMITH: Yes.

21 THE COURT: Okay. You consent. All right. We will
22 dismiss Juror Number 6. Okay. All right. I will dismiss
23 Juror Number 6.

24 (Prospective juror joins side bar.)

25 THE COURT: Ma'am, thank you for your open candid

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Side Bar

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1 answers. We will excuse you and ask you to go back to the
2 jury room and tell them you are excused so I think you will
3 get your papers and you can be finished. Okay?

4 THE PROSPECTIVE JUROR: Thank you very much. Thank
5 you.

6 THE COURT: Yes.

7 Is there anyone else? All right. Come forward and
8 tell me your number.

9 THE PROSPECTIVE JUROR: Number 30.

10 THE COURT: Thank you. Juror Number 30.

11 (Side bar continues; prospective juror joins.)

12 THE COURT: Yes, ma'am. Come forward.

13 THE PROSPECTIVE JUROR: It's not actually with the
14 case. I just called my job people and let them know selection
15 is not finished yet and if I been selected, it could go for
16 six weeks. They said I have to leave the job and then come
17 back when you finish jury duty to start as a fresh person.

18 THE COURT: I see. What --

19 THE PROSPECTIVE JUROR: Bed Bath and Beyond. So
20 that's -- I'm scared.

21 THE COURT: Okay. So they said you would have to
22 resign?

23 THE PROSPECTIVE JUROR: Kind of, but they said then
24 you can rejoin us when you finish jury duty. I worked there
25 five years, but I don't want to start as a fresh person.

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Side Bar

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1 THE COURT: And they wouldn't want to pay you during
2 that time?

3 THE PROSPECTIVE JUROR: Yes. Not even pay, then I'm
4 going to lose benefits.

5 THE COURT: I understand. I understand.

6 This is you, correct?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Step back a minute, please.

9 (Prospective juror leaves side bar.)

10 THE COURT: I think we're going to have to excuse
11 her.

12 MS. SMITH: Yes.

13 MR. BRAFMAN: No objection.

14 THE COURT: And not deprive her of a living. 30
15 will be excused on consent.

16 (Prospective juror joins side bar.)

17 THE COURT: Okay. Ma'am, we will excuse you. You
18 can go down to the jury room where you checked in, tell them
19 you have been excused and get a paper for your job. You don't
20 have to come back.

21 THE PROSPECTIVE JUROR: Thank you so much.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Is there anyone else?

25 Okay. The gentleman in the back, please come

Side Bar

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1 forward. Give me your number please.

2 THE PROSPECTIVE JUROR: 52.

3 (Side bar continues; prospective juror joins.)

4 THE COURT: This is Juror Number 52.

5 Come forward. That's you?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Number 52. Yes, sir.

8 THE PROSPECTIVE JUROR: This is an important matter.

9 I want to be excused. This is too close to my home.

10 THE COURT: Sir, okay. Our District includes
11 Brooklyn, Queens, Long Island and Staten Island, and jurors
12 from all over the District come and serve.

13 THE PROSPECTIVE JUROR: I know, but I can move to
14 something else, but I don't think I want to be on this case
15 because it's close to where I'm residing. I reside close.

16 THE COURT: Well, it's a convenient commute to,
17 between wherever you reside and the courthouse.

18 THE PROSPECTIVE JUROR: No, that's not what I'm
19 referring to. This kid grew up in Brooklyn close to where I
20 grew up, by Riverside.

21 THE COURT: Do you know him?

22 THE PROSPECTIVE JUROR: I don't know him personally
23 but I work in the area. So that's why I'm asking to be
24 excused.

25 THE COURT: Are you concerned for your safety?

CMH

OCR

RMR

CRR

FCRR

1 THE PROSPECTIVE JUROR: I am.

2 THE COURT: Do you have any reason to be concerned?
3 Because I will tell you that there's no evidence before the
4 Court that there's any reason to be concerned and certainly,
5 if the Court were to become aware of any reason, we would take
6 appropriate measures.

7 THE PROSPECTIVE JUROR: The reason I'm concerned is
8 because, like I said, I work in the area as well and that's
9 why I'm concerned.

10 THE COURT: Well, I don't know where this gentleman
11 lives. He might have grown up in your area, but I don't think
12 his residence is an issue --

13 THE PROSPECTIVE JUROR: Okay.

14 THE COURT: -- for your concern.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: But let me -- can you articulate a
17 little bit more clearly what your concern is?

18 THE PROSPECTIVE JUROR: In the papers, he reside in
19 Brooklyn, Sheepshead Bay, and I live ten minutes from there.

20 THE COURT: Yes. Well, I need to remind you --

21 THE PROSPECTIVE JUROR: So that's why I'm concerned.

22 THE COURT: Okay. Well, I would like to just advise
23 you of a couple of things.

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: One, to remind you that there is a

1 presumption of innocence.

2 THE PROSPECTIVE JUROR: Okay.

3 THE COURT: Simply because someone is charged with
4 an offense does not mean they are guilty.

5 THE PROSPECTIVE JUROR: Right.

6 THE COURT: All we have here is an accusation and
7 the Government would have to prove by competent evidence and
8 beyond a reasonable doubt that someone is guilty before you
9 may find him guilty.

10 THE PROSPECTIVE JUROR: Agree.

11 THE COURT: And all twelve people must find someone
12 guilty before they are found guilty.

13 All right. Now, the fact that in New York City we
14 may live near someone who is charged with an offense does not
15 in and of itself provide a basis to be fruitful or concerned.
16 We know of no evidence in this case that would cause concern
17 that any juror would be harmed and I just want to advise you
18 of that and see whether you have a response.

19 THE PROSPECTIVE JUROR: I don't.

20 THE COURT: Okay. Well, could you evaluate this
21 case fairly and keep an open mind?

22 THE PROSPECTIVE JUROR: That may be my problem as
23 well. I mean I want to be a fair jury because I'm there, I'm
24 close to this person.

25 MR. BRAFMAN: May we have a moment, Judge.

Side Bar

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1 THE COURT: How did you find out about where --

2 THE PROSPECTIVE JUROR: I saw it in the newspaper.

3 THE COURT: When?

4 THE PROSPECTIVE JUROR: In the paper this morning.

5 THE COURT: What paper did you see?

6 THE PROSPECTIVE JUROR: Daily News.

7 THE COURT: And was there a headline where it said
8 where Mr. Shkreli lives?

9 THE PROSPECTIVE JUROR: It said he used to live in
10 Brooklyn, Sheepshead Bay.

11 THE COURT: A headline?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: You know I asked you not to read the
14 paper.

15 THE PROSPECTIVE JUROR: Right.

16 (Prospective juror leaves side bar.)

17 MS. SMITH: Your Honor, this witness actually told
18 us this this morning. This is the second pool so he told us
19 that he had read it this morning.

20 THE COURT: Oh.

21 MS. SMITH: And that it was not going to have an
22 effect on him. And he also as a vacation.

23 MR. BRAFMAN: Let me say something. The only thing
24 negative about Mr. Shkreli that hasn't been reported to date
25 has just by this man unfortunately been provided. This man

CMH

OCR

RMR

CRR

FCRR

Side Bar

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1 doesn't want to serve. He's the one who had the issue with
2 the vacation. He went out and called his wife and came back.
3 He's now figured out a way to get out and I think we should
4 just get him out.

5 THE COURT: Yes. Okay. Is that a challenge for
6 cause? I think it is.

7 MS. SMITH: Yes, I am concerned --

8 THE COURT: 52.

9 MS. SMITH: -- if he is now manufacturing something,
10 which is enough --

11 THE COURT: I agree with you. There's just concern
12 that this is a new, a new reason.

13 MR. BRAFMAN: He's going to write the first part
14 down. I'd like the Government, the Government said that it's
15 manufactured.

16 THE COURT: All right.

17 MR. BRAFMAN: If the story is going to be he's
18 afraid, I think it should be --

19 MS. SMITH: No, Your Honor.

20 (Prospective juror joins side bar.)

21 THE COURT: All right. Listen, I recall you had a
22 vacation and your wife was upset with you and I'm going to go
23 ahead and excuse you based on what you've told us. Okay?

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: Thank you. You should go to the second

1 floor and tell them you're excused.

2 THE PROSPECTIVE JUROR: Thank you. Thank you very
3 much.

4 (Prospective juror excused.)

5 MS. SMITH: For the record, I said we would be
6 concerned if he had manufactured anything so I was putting
7 that out there. I did not say that in fact.

8 MS. KASULIS: Yes, just to make it clear.

9 MR. KESHNER: It was manufactured?

10 THE COURT: She said "if," "if."

11 MS. SMITH: I said the Government would be concerned
12 if there was a suggestion that he was manufacturing an excuse
13 to get out of jury service.

14 MR. KESHNER: Okay.

15 MR. BRAFMAN: There are hundreds, thousands of
16 people who live in Sheepshead Bay and this is just absurd, but
17 it is what it is.

18 THE COURT: But you don't want a juror who is afraid
19 of your client either.

20 MR. BRAFMAN: I don't think he's afraid of my
21 client. I think he's afraid of his wife, to be perfectly candid.

22 (In open court.)

23 THE COURT: Is there anyone else who had their hand
24 up? Yes. Come on up.

25 (Continued on next page.)

Sidebar

497

1 (Continuing)

2 (Sidebar continues; prospective juror joins.)

3 THE COURT: What is you're number, ma'am?

4 THE PROSPECTIVE JUROR: 23.

5 THE COURT: Let me just confirm. I'm going to show
6 you our list and confirm that you are No. 23.

7 THE PROSPECTIVE JUROR: Yes.

8 I have little one at home, only two years old. So,
9 I have to go home at three.

10 THE COURT: We didn't know about this yesterday.

11 THE PROSPECTIVE JUROR: I thought it was one day.

12 THE COURT: No, I've been telling you it's six
13 weeks.

14 THE PROSPECTIVE JUROR: I'm sorry.

15 THE COURT: It's all right.

16 THE PROSPECTIVE JUROR: I thought I stay and I just
17 found yesterday I got home. I know it's long time. So, I
18 can't really do that duty because I have a two years old at
19 home to take care of.

20 THE COURT: Is there no parent or family member or
21 grandparent or aunt or uncle who can help you.

22 THE PROSPECTIVE JUROR: The are not at home. They
23 work.

24 THE COURT: Okay. All of your relatives are at
25 work.

Sidebar

498

1 THE PROSPECTIVE JUROR: Sorry.

2 THE COURT: All right. Let me ask you to step back
3 over here, please.

4 (Prospective juror leaves sidebar.)

5 THE COURT: All right, well, she has issues now. So
6 we are losing jurors still.

7 She has child care issues. I guess the fact that
8 she didn't understand when I said that this was a six-week
9 trial has me concerned about her ability to understand the
10 evidence in the case.

11 MR. BRAFMAN: There's no objection, Judge.

12 MS. KASULIS: No objection.

13 THE COURT: All right. No. 23 will be excused on
14 consent.

15 (Prospective juror joins sidebar.)

16 THE COURT: Ma'am, you have no child care; is that
17 right, no ability to get someone to help you?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: I will excuse you. You can go down to
20 the jury room on the second floor and tell them you've been
21 excused and you can go home. You need to get your papers.

22 THE PROSPECTIVE JUROR: Thank you.

23 (Prospective juror excused.)

24 THE COURT: We have one juror. Well, I hate to
25 start over with him but...

Sidebar

499

1 MS. SMITH: Your Honor, if we don't wind up having
2 enough, are there more jurors coming tomorrow?

3 THE COURT: We don't have any more here.
4 Could we get more jurors tomorrow?

5 THE COURTROOM DEPUTY: I can talk to her.

6 THE COURT: You may have to get 70 or 80.
7 He can come back tomorrow with the group, if we can
8 do it.

9 (In open court.)

10 THE COURT: Did anyone else have their hand up?
11 We will resume questions. Thank you, ladies and
12 gentlemen. Is there anyone who has difficulty seeing,
13 hearing, speaking, understanding, or reading English or who
14 for any other reason would find it difficult to follow the
15 evidence presented at the trial? If so, please raise your
16 hand?

17 I have already introduced you to the attorneys and
18 the parties, my case manager Ms. Sandra Jackson, and my law
19 clerk Vivek Tata.

20 Does anyone know any of the attorneys or other
21 individuals sitting at the tables for the Government or the
22 defense. If so, please raise your hand.

23 Does anyone know Mr. Shkreli?

24 Do you, a family member, or close friend follow
25 Mr. Shkreli on any social media platform or service? If so,

Sidebar

500

1 raise your hand.

2 All right, Juror No. -- what's your number?

3 THE PROSPECTIVE JUROR: 17.

4 THE COURT: I would you like to speak to you at
5 sidebar, please. Thank you.

6 (The following occurred at sidebar; prospective
7 juror joins.)

8 THE COURT: Sir, you're No. 17? Please come forward
9 and tell us what you do.

10 THE PROSPECTIVE JUROR: I work for a small media
11 company.

12 And many of my colleagues follow him on Twitter and
13 I've seen some of the inflammatory comments he's made towards
14 people on that platform.

15 THE COURT: Has your exposure to anything you've
16 seen on social media or in the general mainstream media
17 affected your ability to consider this case with a fair mind
18 towards both sides and an impartial state of mind?

19 THE PROSPECTIVE JUROR: I don't believe that it did,
20 no.

21 THE COURT: And would you commit to isolating
22 yourself throughout this trial from any media regarding
23 Mr. Shkreli or this case?

24 THE PROSPECTIVE JUROR: I would, but I do think that
25 with the nature of my colleagues being journalists it would be

Sidebar

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1 difficult for me to avoid it completely. I can ask them to
2 refrain, if that's --

3 THE COURT: Well, your colleagues aren't -- they're
4 not necessarily going to be sitting in the jury.

5 THE PROSPECTIVE JUROR: Correct.

6 THE COURT: What I need you to do is to not talk
7 with your colleagues or your friends or your family members
8 about this case. Would you commit to doing that?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Can I ask you the name of the media
11 platform that your friends use?

12 THE PROSPECTIVE JUROR: Twitter.

13 THE COURT: Have you formed any opinions about
14 Mr. Shkreli or this case based on what you or your friends
15 have discussed on Twitter?

16 THE PROSPECTIVE JUROR: Not this case but him as an
17 individual, yes.

18 THE COURT: Have you, yourself, formed an opinion?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: Because it's fine to have an opinion,
21 the question is whether any exposure that you've had outside
22 this courtroom would affect your ability to be fair and
23 impartial to both sides. Could you do that?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Thank you. Can I just ask you to step

Sidebar

502

1 back one step.

2 (Prospective juror leaves sidebar.)

3 MR. BRAFMAN: Your Honor, I think it's virtually
4 impossible for him to go to work every day with colleagues who
5 are following Mr. Shkreli on Twitter or who have. Because
6 when we began, he said I'm familiar with through my colleagues
7 with the defamatory things he has said about people.

8 Unfortunately, the Twitter history is just horrific
9 and it will never be allowed into this courtroom. Everybody's
10 going to be bombarded with it. It's a difficult, if not
11 impossible, position to be completely independent because he
12 works with these people and I'm sure they're part of his
13 social network as well. The Twitter is probably the most
14 prejudicial part of Mr. Shkreli's history.

15 THE COURT: Well, he's going to be here in court,
16 not at work with colleagues.

17 MR. BRAFMAN: But Twitter is available 24/7.

18 THE COURT: He'll be instructed not to participate
19 on Twitter.

20 MR. BRAFMAN: I would ask you to grant me a
21 challenge for cause. I think the Government, in fairness,
22 should consent in this case. And if they don't, I think you
23 should inquire about his ability to deal with his colleagues
24 on a going-forward basis: Despite the inflammatory views of
25 Mr. Shkreli, could he conclude he could be acquitted?

Sidebar

503

1 I think this puts this juror in an inappropriate and
2 unfair position.

3 MS. KASULIS: Your Honor, with respect to follow up
4 along the line, I have no understanding whether he needs to be
5 on Twitter for work. And if he has friends that are
6 journalists, they're not going to be able to not tweet about
7 this case, potentially, depending on the nature of their job,
8 and then automatically that would pop on his feed. If he has
9 to be on Twitter to perform his job responsibilities or be
10 involved in his community that he works in professionally, we
11 have concerns as well about his exposure throughout the trial.

12 THE COURT: Do you want to consent to the challenge
13 for cause?

14 MS. KASULIS: Yes.

15 MR. BRAFMAN: Thank you.

16 THE COURT: This was Juror No. 17, correct? We will
17 excuse Juror 17.

18 MR. BRAFMAN: Thank you.

19 (Prospective juror joins sidebar.)

20 THE COURTROOM DEPUTY: Sir, thank you for your
21 candid answers. We will excuse you. Go down to the second
22 floor and check in with the jury clerks and get your
23 paperwork. Thank you.

24 (Prospective juror excused.)

25 THE COURT: Is there anyone else who would have

Jury Selection

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1 raised their hand in answer to my last question?

2 Thank you we'll resume questions.

3 (Sidebar ends; in open court.)

4 THE COURT: I will now read a list of people we
5 expect will be called to testify at trial. And when I have
6 finished reading this list, please raise your hand if you know
7 of or have heard of any of these people.

8 Joe Allen, David Abramson, John Archer, Steve
9 Aselage, Josiah Austin, Ken Banta, Maria Beconi, Dr. Alan
10 Begs, Marek Biestek, Brent Blanton, Darren Blanton, George
11 Blasko, Courtney Bond, Seymour Block, Yuri Cantor, David
12 Carter, Mi Nue or Susan Chew, Mi Nue Chew or Susan Chew,
13 Barbara Cieplugh, Lloyd Clareman, Timothy Clemensen, Jeffrey
14 Cobb, Howard Cotton, Bernadette Davida, FBI Special Agent
15 Christopher Delzotto, Justin DeMartino, Diandra de Morrell
16 Douglas, Mark Erlich, Mark Fawer, Michael Fearnow, Troy
17 Fearnow, Thomas Fernandez, Frank Ferrara, David Filer, Joshua
18 Frase, John Fulvio, Alan Geller, David Geller, Evan Greebel,
19 Christine Giordano, Neal Golding, Michael Gordon, Patrick
20 Gordon, Michelle Griswold, Andrew Grumet, Edward Hackert, Cade
21 Hamner, Michael Harrison, Fred Hassan, Sarah Hassan, George
22 Haywood, Chad Hennings, George Huang, Leonora Izerne, Sunil
23 Jain, Chris James, Robert Johnson, Meral Kerim, Kim Keur,
24 Barbara Kocher, Richard Kocher, Thomas Koestler, John Kollins,
25 Justina Kralaska, David Kravitz, Susan Lane, Mark LaPolla,

Jury Selection

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1 Hudson Lau, Michael Lavelle, Sam Lieberman, Zvi Lowey, Andre
2 Logan, Gary Lyons, Pedro Machado, FBI Special Agent Matthew
3 Mahaffey, Schuyler Marshall, Corey Massella, Charles
4 McCormick, Patrick McGowan, Amy Merrill, Fazela Mohamed, Gary
5 Mohamed or Muhammed, Kevin Mulleady, John Neill, Liam O'Brien,
6 Deborah Oremland, Jeffrey Paley, Marc Panoff, Timothy
7 Pierotti, Horacio Plotkin, Craig Poschmann, Steve Richardson,
8 Stalin Rodriguez, Steven Rosenfeld, Michael Rosensaft, Lindsay
9 Rosenwald, Allison Russo, Brent Saunders, Eric Schmidt, Ian
10 Shapiro, Jesse Shefferman, Maged Shenouda, Alvin Shih, Anna
11 Shkreli, Katrina Shkreli, Leonora Shkreli, Mark Shkreli,
12 Pashko Shkreli, Michael Smith, Wendy Spaulding, Spencer
13 Spielberg, Caroline Stewart, Steven Stich, Paul Stiliano, FBI
14 Special Agent Sean Sweeney, Jackson Su, Edmund Sullivan, Ron
15 Tilles, Howard Trachtman, Molly Tschang, Edwin Urrutia, Andrew
16 Vaino, Margaret Valeur-Jensen, Michael Verde, Tillman Ward,
17 Eric Wagner, George Yaffe, Lee Yaffe.

18 If you heard of any of these people or know them,
19 please raise your hand.

20 We have two hands in the back. Will the juror to
21 the left, my left, please give me your number, ma'am?

22 THE PROSPECTIVE JUROR: 55.

23 THE COURT: Which name are you familiar with?

24 THE PROSPECTIVE JUROR: Because of the commonality,
25 Robert Johnson.

Sidebar

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1 THE COURT: All right. The name that you were
2 familiar with was Robert Johnson; is that what you said?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: All right. It is a common name. So, we
5 will explore at sidebar whether this is the same Robert
6 Johnson that you know. Please come forward, ma'am. Thank
7 you.

8 (The following occurred at sidebar; prospective
9 juror present.)

10 THE COURT: Hi, ma'am. What is your number?

11 THE PROSPECTIVE JUROR: 55.

12 THE COURT: All right. Robert Johnson, we just want
13 to make sure it's not the same one.

14 THE PROSPECTIVE JUROR: I know a Robert Johnson. I
15 doesn't know if it's who you know.

16 THE COURT: How can we identify?

17 MS. SMITH: What does he do for work?

18 THE COURT: Do you know what he does for work?

19 THE PROSPECTIVE JUROR: He works in the Parks
20 Department.

21 MR. BRAFMAN: No.

22 THE COURT: Not the same person. Thank you.

23 (Prospective juror leaves sidebar.)

24 (In open court.)

25 THE COURT: Juror 56, please come forward.

Sidebar

507

1 What is the name of the person that is familiar to
2 you?

3 (Sidebar continues; prospective juror joins.)

4 THE PROSPECTIVE JUROR: I just didn't want to scream
5 it out.

6 THE COURT: You are No. 56?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Okay. Come forward.

9 THE PROSPECTIVE JUROR: David Galler.

10 THE COURT: We'll just try to find out whether this
11 is the same person.

12 THE PROSPECTIVE JUROR: I work for a Jeffrey Galler,
13 and he has a son David Galler. He's a dentist.

14 MR. BRAFMAN: Where does he live?

15 THE PROSPECTIVE JUROR: Long Island.

16 THE COURT: David Galler is a dentist, you said?

17 MR. BRAFMAN: This is Geller.

18 THE COURT: Geller.

19 THE PROSPECTIVE JUROR: There's another one, Amy
20 Merrill.

21 THE COURT: Let's just finish David Geller.

22 THE PROSPECTIVE JUROR: G-A-L-L.

23 THE COURT: Different spelling. This is Geller.
24 I'm sorry for my pronunciation.

25 THE PROSPECTIVE JUROR: And the other is Amy

Sidebar

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1 Merrill.

2 THE COURT: What does Amy Merrill do, if you know?

3 THE PROSPECTIVE JUROR: She works in my office.

4 THE COURT: What kind of office do you work in?

5 THE PROSPECTIVE JUROR: Dental. Amy Merrill works
6 as a secretary.

7 MS. SMITH: No.

8 THE COURT: Not the same person. Thank you.

9 (Prospective juror leaves sidebar.)

10 THE COURT: Okay. We'll continue. I'll read the
11 rest of the list.

12 (Sidebar ends; in open court.)

13 THE COURT: I will now read a list of entities,
14 locations, and medications that may be referred to during this
15 trial. When I have finished reading the list, please raise
16 your hand if you have personal knowledge of or experience with
17 these entities, locations, or medications.

18 Allos Pharmaceuticals, A-L-L-O-S; Amag, A-M-A-G,
19 Pharmaceuticals; Amgen; Anslow & Jaclin, J-A-C-L-I-N, LLP;
20 Canaccord Genuity; Catalyst; Chelsea Therapeutics; Citrin
21 Cooperman; Claridge Capital; Cooley Godward Kronish, LLP; Cobb
22 & Associates; Colt Ventures; Cowen Group; Cramer Berkowitz;
23 Desert Gateway; Dynangrow Capital, LLC; EFAY, E-F-A-Y, Limited
24 Partnership; Edwards Angell Palmer & Dodge; Elea Capital;
25 Financial Institution Regulatory Authority, also known as

LAM

OCR

RPR

Jury Selection

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1 FINRA; Fulvio & Associates; Houlihan Lokey, L-O-K-E-Y;
2 Interactive Brokers; KaloBios Pharmaceuticals; Katten Muchin
3 Rosenmann, LLP; Kleinberg Kaplan Wolff & Cohen, LLP; Ligand
4 Pharmaceuticals; Manchester Pharmaceuticals, LLC; Marcum LLP;
5 Merrill Lynch Pierce Fenner & Smith, Incorporated; McCormick &
6 O'Brien, LLP; MKM Incubator; MSMB Capital Management, LLC;
7 MSMB Capital Management, LP; MSMB Consumer, LP; MSMB
8 Healthcare, LLC; MSMB Healthcare, LP; MSMB Isotope Fund, LP;
9 MSMB Isotope Management, LLC; Myrexix, M-Y-R-E-X-I-S; NAV,
10 N-A-V, Consulting, Inc.; O-N-Y, all caps; Orexigen
11 Therapeutics; Retrophin, Inc.; Retrophin, LLC; RBC
12 Professional Trading Group, LLC; Rothstein Kass; Securities &
13 Exchange Commission, also known as SEC; SeraCare Life Science,
14 Incorporated; Surepoint Investment Fund, LLC; Standard
15 Registrar & Transfer; Telik, T-E-L-I-K; Turing
16 Pharmaceuticals; UBS; and Valeant Pharmaceuticals.

17 If you've heard of or know of these entities, please
18 raise your hand.

19 Juror No. 1, which entities?

20 THE PROSPECTIVE JUROR: FINRA, SEC, and Citrin
21 Cooperman.

22 THE COURT: Let me ask you to come to sidebar,
23 please.

24 (The following occurred at sidebar; prospective
25 juror present.)

Sidebar

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1 THE COURT: This is Juror No. 1. You said you were
2 familiar with certain names.

3 THE PROSPECTIVE JUROR: Yes. I'm in finance, so
4 FINRA, a regulator; SEC.

5 THE COURT: Are you, yourself, a regulator?

6 THE PROSPECTIVE JUROR: No.

7 And Citrin Cooperman I believe once did a
8 presentation for a company that's affiliated to mine, but it's
9 vaguely remembered. That's how I remembered, that's all.

10 THE COURT: You don't have any specific recollection
11 about Citrin Cooperman in relation to your employment?

12 THE PROSPECTIVE JUROR: No, not at all.

13 THE COURT: What's the third one, please?

14 THE PROSPECTIVE JUROR: The third was -- FINRA, SEC,
15 and Citrin Cooperman.

16 THE COURT: And tell me what your familiarity is
17 with SEC. Is that just a result of your work?

18 THE PROSPECTIVE JUROR: I'm a sales supervisor for
19 the credit union to the United Nations, so I supervise brokers
20 and I approve trades, things of that sort. So, I sort of
21 handle the compliance on that side. I have to be familiar
22 with the regulatory aspect of the securities industry.

23 THE COURT: Could you sit as a fair and impartial
24 juror in this case and listen carefully to the evidence and
25 decide the case based on the evidence presented?

LAM

OCR

RPR

Sidebar

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1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Would you have any concerns that your
3 experience in the financial world would interfere with your
4 ability to decide this case based on the evidence presented
5 here?

6 THE PROSPECTIVE JUROR: I don't believe so. I think
7 it increases my knowledge, but it wouldn't interfere.

8 THE COURT: Okay. Thank you. Let me ask you to
9 step back one foot.

10 (Prospective juror leaves sidebar.)

11 MR. BRAFMAN: Your Honor, we had no idea that this
12 is her job. This whole case sort of centers on his financial
13 regulatory matters and I believe she has, unfortunately, far
14 more expertise than any another juror. And I think we can be
15 certain we don't want to have a jury of one expert and eleven
16 followers. It's a concern.

17 THE COURT: Right, but I don't think her work
18 experience disqualifies her from serving. And she's been very
19 clear that it would not influence or interfere with her
20 ability to consider the evidence, decide the case based on the
21 evidence here.

22 So, I'm not sure what more you would want me to ask
23 her, but I'm happy to ask her further if you'd like.

24 MR. BRAFMAN: Can you ask if her experience with
25 FINRA in particular deals with regulatory issues and if she's

Sidebar

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1 a hearing officer, if she participates in FINRA hearings?

2 There's going to be evidence about that.

3 MS. SMITH: Just for the record, there's not going
4 to be any evidence about FINRA hearings. There was a
5 deposition and arbitration.

6 MR. BRAFMAN: I'm sorry, I misspoke. But FINRA is
7 in the case.

8 THE COURT: Do you want me to ask her whether she
9 has participated in any FINRA --

10 MR. BRAFMAN: Or SEC regulatory hearings.

11 (Prospective juror joins sidebar.)

12 THE COURT: Ma'am, have you, in your experience,
13 participated in any FINRA or SEC proceedings?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: All right. Thank you. Step back a
16 moment.

17 (Prospective juror leaves sidebar.)

18 THE COURT: I don't have any basis to doubt her.

19 MR. BRAFMAN: That's fine, thank you.

20 (Prospective juror joins sidebar.)

21 THE COURT: Ma'am, you can return to your seat.

22 Thank you.

23 (Prospective juror leaves sidebar.)

24 (In open court.)

25 THE COURT: Did anyone else have their hand up?

Sidebar

513

1 Juror No. 5, come forward, please.

2 (Sidebar continues; prospective juror joins.)

3 THE PROSPECTIVE JUROR: By profession, I'm a
4 pharmacist with over 32 years' experience. I also chair a
5 number of medical center committees.

6 I do have knowledge of Turing Pharmaceuticals. I
7 understand all about drug pricing and what occurred with the
8 Daraprim and that other past history with the Defendant. I
9 also have full knowledge of Amgen.

10 Again, this is all in the course of my duties.

11 THE COURT: The question for you is whether any of
12 that experience you've gained in your professional life would
13 have any adverse impact on your ability to listen with an open
14 and fair mind to the evidence in this case and decide the case
15 based only on the evidence presented at this trial.

16 THE PROSPECTIVE JUROR: I feel that I can give a
17 fair and impartial judgment on the evidence presented.
18 Because in my mind, from the little I've learned, this seems
19 to be dealing with a securities issue. The other case, which
20 I don't ever think went to court or anything like that, there
21 was just a lot of bad press about the drug pricing.

22 To answer your question, I think I can divorce
23 myself from that.

24 THE COURT: There's never been any proceeding,
25 formal or administrative or judicial, involving drug pricing,

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1 to my knowledge, involving Mr. Shkreli.

2 MR. BRAFMAN: We should have this outside the
3 presence --

4 THE COURT: I'm just addressing his comment directly
5 to him.

6 THE PROSPECTIVE JUROR: I just want to make sure you
7 folks feel comfortable with that. I have no objection either
8 way.

9 THE COURT: But the question for you, given the
10 knowledge of pharmaceuticals, whether you could be fair and
11 impartial and decide this case based on the evidence
12 presented.

13 THE PROSPECTIVE JUROR: I feel that I can be fair
14 and impartially, but I just want to let you folks know I have
15 a greater understanding of that whole scenario than, I would
16 say, the average citizen, just by education and training. And
17 I think you need to know that.

18 THE COURT: Okay. Thank you.

19 (Prospective juror leaves sidebar.)

20 MR. BRAFMAN: Your Honor, there was a widely
21 publicized Congressional hearing involving Mr. Shkreli and
22 Daraprim that has been replayed almost every time they do the
23 story of this trial.

24 He is involved in Daraprim. He knows about the
25 pricing issues. That's precisely what we're trying to keep

1 out of the case, and he already has that knowledge.

2 THE COURT: He made the distinction there is a
3 securities case and he understands and he's aware of it, but
4 he said three times, I believe, that he could be fair and
5 impartial.

6 MR. BRAFMAN: I appreciate that and I appreciate his
7 candor.

8 There are only so many peremptory challenges in the
9 case, and this man that has been exposed to all of the bad
10 press about Mr. Shkreli that prompted him being considered the
11 most hated man in America soon after that hearing. There was
12 a Congressional hearing. I'm sure if you asked him he would
13 tell you he's aware of it, that he saw it, that he understands
14 what it's about. And it's bad for Mr. Shkreli and has nothing
15 to do with this trial.

16 THE COURT: So, you want me to ask him if he's aware
17 of the Congressional hearing?

18 MR. BRAFMAN: Yes. I'd like to challenge him for
19 cause before you ask that. But if you think we need a more
20 detailed record -- trust me, I'm not trying to get rid of
21 jurors.

22 THE COURT: I trust you. I'm not accusing you of
23 anything. We all want to get to the trial.

24 MR. BRAFMAN: I'm trying very hard, like you are.

25 THE COURT: I'm not faulting you. I appreciate it.

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1 I just don't -- respectfully, at this point, based
2 on what he said, I'm not seeing a reason to excuse him because
3 he has assured us that he understands the difference. But I
4 will ask him about Congressional hearing.

5 What I meant by that comment when I was addressing
6 him was that Congress heard from this fellow, Mr. Shkreli, he
7 took the Fifth, and nothing came of it. There's been no
8 formal proceeding, other than press.

9 MR. BRAFMAN: It's probably the most replayed
10 ten-minute Fifth Amendment in the history of modern --

11 THE COURT: He invoked his rights. No one can fault
12 him for that.

13 MS. KASULIS: Minor clarification if you're going to
14 ask him what he knows about the hearing, to what end, given
15 point? Has he seen it?

16 THE COURT: Right.

17 (Prospective juror joins sidebar.)

18 THE COURT: Sir, come forward, please. You had
19 mentioned -- have you observed or watched any media reports
20 about Congressional testimony by Mr. Shkreli?

21 THE PROSPECTIVE JUROR: I haven't seen it on C-Span
22 or anything like that, but I have read about what occurred. I
23 think almost every American citizen, particularly every
24 pharmacist, has read about drug pricing.

25 And the whole topic of drug pricing, again, I

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1 realize it has nothing do with this case, is so prominent in
2 pharmacist's minds, I think almost every pharmacist knows
3 about what occurred.

4 THE COURT: Does your knowledge of that drug pricing
5 impair your ability in this case, which you understand is a
6 different case, to consider the evidence and decide the case
7 based only on the evidence regarding the charges or evaluating
8 the lack of evidence or the weight of the evidence in this
9 case? Could you do that?

10 THE PROSPECTIVE JUROR: You had briefly mentioned
11 that it involved securities or securities fraud. I really
12 don't know much about that at all.

13 To answer your question, yes, I could be impartial.
14 But I want you to realize, like I said, what my background is.

15 THE COURT: I appreciate that.

16 THE PROSPECTIVE JUROR: Because I do know about
17 Amgen and I do know about Turing Pharmaceuticals more than the
18 average person.

19 THE COURT: But is there anything about that
20 knowledge that, again, impacts your fair mindedness?

21 THE PROSPECTIVE JUROR: I don't have any bias going
22 into the case. I would keep an open mind based on the
23 evidence.

24 But, again, you guys have to be comfortable.

25 THE COURT: We appreciate it. Thank you.

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1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: Judge, just so that the record is
3 complete, on two occasions, I think, Ms. Smith indicated that
4 should Mr. Shkreli take the witness stand, that she feels that
5 it might be appropriate, depending on if he opens the door, to
6 question him about the Daraprim price increase.

7 If we get to that point, I don't want to have to
8 renew my motion to exclude him.

9 THE COURT: I will ask him now if Mr. Shkreli is
10 called and the subject does come up, whether he'll have any
11 difficulty being fair.

12 MR. BRAFMAN: Okay. Thank you.

13 (Prospective juror joins sidebar.)

14 THE COURT: Sir, in the event that there is
15 testimony about drug pricing -- it's not currently charged in
16 the case, but in the event there is testimony on that issue,
17 would you, knowing what you know and being involved in related
18 issues as a pharmacist, would you have any difficulty being
19 fair and impartial in those circumstances?

20 THE PROSPECTIVE JUROR: I wouldn't have any
21 difficulty being fair and impartial.

22 But if I was in deliberations with the jurors, you
23 know, and they ask me questions about it, I don't think I
24 would be able to say -- not give them my thoughts, not my
25 personal opinion, but explain what those issues were. And I

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1 don't know if that's right or wrong, but I know about it, and
2 I just need to tell that you.

3 THE COURT: Well, the jurors are only going to be
4 deliberating on the charges in the indictment, not about any
5 other issues that may come up during the trial. Frankly,
6 those issues are unrelated to the charges in this case, but it
7 may come up in a context where a party may be able to elicit
8 testimony on that subject.

9 So, my question is whether despite what you know
10 about drug pricing, if you heard evidence regarding drug
11 pricing, would you be able to maintain a fair and open mind to
12 both sides?

13 THE PROSPECTIVE JUROR: I would listen to what was
14 presented, mull it over in my mind, and the answer is yes, I
15 would. I would not come in with any pre-bias or opinions on
16 anything that may have occurred allegedly in the past. I
17 would keep an open mind, to the best of my ability.

18 THE COURT: Well, thank you, sir.

19 THE PROSPECTIVE JUROR: You're welcome.

20 (Prospective juror leaves sidebar.)

21 MR. BRAFMAN: Your Honor, the juror said quite
22 clearly that if the issue were during the deliberations and
23 the jurors ask his opinion, he would tell them what he knows
24 about the subject. We now have someone who has far more
25 knowledge than a lay juror on a subject which whether or not

1 it's the charge may, unfortunately, be the driving force when
2 Mr. Shkreli testifies.

3 I think we have a man who that has an expertise in
4 the pricing of drugs. Pricing of drugs is going to be an
5 issue in this case one way or another. And he told you that
6 he's going to tell the jurors what he knows. I think he's
7 trying to stay on the jury and I give him credit, but I think
8 we are, respectfully, making a mistake if we keep him. I
9 don't think it's fair.

10 I know we're losing jurors but --

11 THE COURT: I'm just waiting to hear something from
12 this gentleman that would indicate that he would be biased or
13 unable to evaluate the evidence. The fact that he knows -- I
14 could also instruct them that they should not be discussing
15 matters unrelated to the charges, including drug pricing, in
16 their deliberations, that it's just not in the case.

17 MR. BRAFMAN: If we had a case involving justifiable
18 force used by a police officer and if you had someone who was
19 trained as a police officer or went to one of the police
20 academies, and if during deliberations the question comes up
21 he said I'll tell what I know, I think he should be excused.

22 I think that's basically what he said.

23 THE COURT: That's because in that scenario you
24 described, the issue of excessive force would be in the case.
25 The drug pricing has a remote possibility of being in the

1 case.

2 MR. BRAFMAN: It's the elephant in the room, Judge.
3 It's the elephant in the room. The reason Mr. Shkreli is
4 condemned in all of the media, it's not because of this
5 securities fraud case -- I'll be candid with you, I think it's
6 very defensible -- the elephant in the room is what happened
7 with Daraprim. Unfortunately, because it impacted on the gay
8 and lesbian community, it has much more fire as an issue --
9 and perhaps properly so, I'm not suggesting otherwise -- but
10 it's the elephant in the room. I hate to use that expression,
11 but there's no more damaging issue in this case than perhaps
12 Mr. Shkreli's involvement in what happened with Daraprim.

13 He knows all about it and he knows about drug
14 pricing. I think we're trying to save a juror who knows what
15 to say to stay here. I'm not denying that he says all the
16 right things, but if you read back the record, when you asked
17 him about drug pricing he said very clearly: If the issue
18 came up in deliberations and jurors asked me, I would tell
19 them what I know.

20 He's not supposed to know more than them.

21 THE COURT: If I instructed him, do you think he
22 would follow my instructions?

23 MR. BRAFMAN: I don't think he's capable of doing
24 that, Judge. He has too much expertise in an area that no one
25 else on the panel is going to have.

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1 MS. KASULIS: Your Honor, I just don't think there's
2 anything that would indicate that he wouldn't be able to
3 follow your Honor's instruction.

4 THE COURT: I'm going to ask whether he would follow
5 my instruction that he would not be allowed to discuss
6 anything not in evidence, including his own expertise, all
7 right? I will see what he says.

8 (Prospective juror joins sidebar.)

9 THE COURT: Sir, you had mentioned that if you were
10 in jury deliberations and a question came up about drug
11 pricing, you would want to answer questions of the jurors
12 based on what you know.

13 The question is, if you were given instruction by
14 the Court, as all jurors will be given, that you may only
15 consider the evidence at this trial and nothing else in
16 reaching your verdict, would you follow that instruction?

17 And that would include not discussing your own
18 knowledge about drug pricing or pharmaceuticals or
19 pharmaceutical companies but, rather, deciding based on the
20 evidence. Would you be able to refrain from discussing with
21 your fellow jurors your own knowledge of drug pricing in
22 pharmaceuticals?

23 THE PROSPECTIVE JUROR: If you directed me, as a
24 Judge, not to say anything, I wouldn't say anything, I'm not
25 going to say anything. But if another juror asked me, I would

1 say the judge said I can't say anything.

2 THE COURT: Well, if another juror asked you a
3 question about drug pricing, this would occur in the context
4 of deliberations. And the jurors, all of you, would be
5 instructed that only the evidence at the trial can be
6 considered in deciding this case, not knowledge that somebody
7 in the industry might have.

8 Would you be able to say to your fellow jurors if
9 the question were asked we can only use the evidence presented
10 at trial; the testimony, the documents, the stipulations.

11 THE PROSPECTIVE JUROR: I would have to. I mean,
12 there's no way I would be able to talk about anything else but
13 what the Court said to talk about, which is the evidence.

14 THE COURT: Do you feel confident you could obey
15 that instruction?

16 THE PROSPECTIVE JUROR: Yeah, I mean, the only thing
17 I wanted to learn a little bit more about is what the charges
18 were with the securities. I mean, we just -- you had
19 mentioned it, but I didn't know if it was stock fraud or --
20 you know, that's not my area. So, really, when you use the
21 word "securities," I just think of stocks.

22 THE COURT: What I did, sir, was just, again,
23 summarize the charges in the indictment, which is just the
24 accusatory instrument.

25 THE PROSPECTIVE JUROR: Right.

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1 THE COURT: It's of no evidentiary value.

2 What you will have is a trial where the Government
3 has to sustain its burden of proof --

4 THE PROSPECTIVE JUROR: Okay.

5 THE COURT: -- by presenting evidence. And if they
6 don't do it in a way that's understandable to you, then it's
7 your role as a juror to give that evidence whatever weight it
8 deserves and to decide whether there's enough to sustain or --
9 whether the Government has met its burden. And if it hasn't,
10 then you'll be instructed accordingly.

11 THE PROSPECTIVE JUROR: Right.

12 Again, just to say, I would follow whatever
13 directions you gave me. You know what my background is. You
14 know, I just wanted you to know that and I know about these
15 companies. And whatever you decide is fine me with me. Thank
16 you.

17 (Prospective juror leaves sidebar.)

18 MR. BRAFMAN: I have one more question. And I
19 appreciate your indulgence and patience, I really do.

20 Could you ask a followup question: If Mr. Shkreli
21 were to testify and part of that testimony on direct or cross
22 would involve Daraprim and drug pricing and Mr. Shkreli were
23 to say something that you, yourself, know not to be true not
24 because of any evidence in the case but because of your
25 expertise and your background, would you allow that to affect

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1 your decision in this case?

2 THE COURT: Okay.

3 MR. BRAFMAN: Not worrying about discussions with
4 other jurors.

5 THE COURT: A juror has to evaluate credibility of
6 every witness.

7 You're saying would he allow his own knowledge to
8 enter his mind in deciding whether to accept his testimony?

9 MR. BRAFMAN: You can assess his credibility.
10 That's what trials are about. The question I have is, forget
11 about discussing with jurors, if Mr. Shkreli says something as
12 affirmative fact that based on the evidence no other juror
13 disbelieves, based on the evidence, and his expertise allows
14 him to conclude that Mr. Shkreli is not being truthful, that's
15 not the appropriate way to establish credibility because he's
16 bringing expertise from outside the trial into the jury box.

17 THE COURT: All right. I don't even know how to
18 craft a question like that, but I could try.

19 I'll hear from the Government.

20 MS. KASULIS: Your Honor, jurors draw on their
21 personal experiences to evaluate a witness' credibility. If
22 Mr. Shkreli is going to make some representation that he knows
23 is not true, they should be allowed to draw on their knowledge
24 in that determination as to Mr. Shkreli's credibility. I
25 don't see what the issue is.

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1 MR. BRAFMAN: Judge, if you have a lawyer on the
2 jury and the lawyer said to the other jurors, look, I know
3 what the judge is telling you, but I know the law too and I'm
4 telling you this is the law, that would not be permitted.

5 This is a pharmaceutical expert in a case where the
6 pricing may be the single most unfortunate issue that we have
7 to confront. And he is an expert in that area. I think that
8 he's not going to be assessing Mr. Shkreli overall
9 credibility --

10 THE COURT: I don't know that he's an expert. He's
11 aware of it. I understand your point, that you think he's an
12 expert or at least he has more knowledge than the average
13 juror on this issue.

14 But I'm just trying to think of how to ask it again
15 in a different way. I don't know what else to ask him. If
16 Mr. Shkreli testifies about drug pricing, would you allow your
17 expertise to enter into your assessment of the credibility of
18 his testimony?

19 MR. BRAFMAN: Your own private expertise.

20 MS. SMITH: Your Honor, that is a suggestion that
21 the Defendant might purger himself.

22 MR. BRAFMAN: Let me worry about that.

23 MS. SMITH: I know, but I would prefer not to
24 introduce this idea.

25 THE COURT: I've tried very hard not to create any

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1 expectation that the Defendant will testify. I've been very
2 much dancing around the concept that the evidence may come
3 into trial.

4 I can ask him whether he would evaluate a witness'
5 credibility about drug pricing based on his expertise, but I
6 don't want to focus it on your client.

7 MR. BRAFMAN: Thank you.

8 (Prospective juror joins.)

9 THE COURT: If a witness were to offer testimony
10 about drug pricing in this case, would you listen and observe
11 the demeanor of that witness and assess that witness'
12 credibility based on your common sense ability to interact
13 with people and decide whether you think they're telling the
14 truth or not telling the truth?

15 You know, evaluating witness credibility is an
16 important role for any juror. But if that type of testimony
17 came up regarding drug pricing, would you be able on divorce
18 from your mind whatever experience you have about drug pricing
19 and just assess the weight and credibility of that witness
20 testimony based on what they said, based on how they appear,
21 and based on what they say makes sense?

22 THE PROSPECTIVE JUROR: Well, as far as credibility
23 goes, I mean, that would be a little bit tough for me. But
24 what I would do is I would listen to what they had to say and
25 I would apply it to my knowledge based on my education and

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1 training. Whatever verbal testimony they gave, I'd have to
2 apply it against what I know based on education, based on
3 years of experience in practice. And if that matched and it
4 was correct, to me that would be a match. But if somehow what
5 they were saying was not factually correct...

6 THE COURT: How would you make the assessment of
7 factual correctness? Would it be based on outside the court?

8 THE PROSPECTIVE JUROR: No. When you say "outside
9 the court --"

10 THE COURT: Outside the evidence in the trial.

11 THE PROSPECTIVE JUROR: I would have to -- that's a
12 very difficult question.

13 THE COURT: Yes.

14 THE PROSPECTIVE JUROR: If a witness gave some type
15 of an incorrect statement that had to do with pharmaceuticals
16 or drug pricing, I would listen to it but in my mind I would
17 have to apply it to what I was trained through my degrees and
18 through my experience to see if that matches up.

19 And then I'm assuming the testimony would be
20 considered evidence.

21 THE COURT: Of course.

22 THE PROSPECTIVE JUROR: Again, I'm not an attorney,
23 but I would just have to match up what they say to what's in
24 my mind based on training and education. That's the best
25 answer I can give you.

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1 THE COURT: Thank you. I appreciate your efforts.

2 THE PROSPECTIVE JUROR: You're welcome. I'll step
3 to the side.

4 THE COURT: Thank you.

5 (Prospective juror leaves sidebar.)

6 THE COURT: Let's make a decision about this juror.
7 Do you still want to exclude him?

8 MR. BRAFMAN: For cause.

9 MS. KASULIS: We object, your Honor.

10 THE COURT: You know, I think there is -- I'm trying
11 to think of something that he said that would give me pause
12 about this juror's commitment to being fair and open-minded
13 and his commitment to deciding this case based on the
14 evidence. We can't ignore that he has expertise, but we can't
15 exclude a juror simply because they might have knowledge about
16 matters in dispute.

17 So, in a medical malpractice case, we don't
18 automatically exclude every medical doctor or nurse. In a
19 police brutality case, we don't automatically exclude every
20 police officer. It's really if that juror demonstrates or
21 even hints at some inability to be fair and impartial and to
22 commit to deciding a case based on the evidence. So,
23 everything I've heard from this juror indicates that he would
24 do that.

25 Now, could he hide away and take part of his

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1 knowledge and experience out of his brain? I don't think any
2 human is capable of doing that. And I don't think that's
3 grounds to dismiss a juror for cause. It's not, in my mind,
4 cause for dismissal.

5 So, respectfully, I would deny your request.

6 MR. BRAFMAN: One last observation.

7 THE COURT: Okay.

8 MR. BRAFMAN: Last time he was up here, I think he
9 gave you the language that requires a dismissal for cause. He
10 said that he would evaluate the testimony and he would compare
11 it to what he knows in his expertise and his experience.

12 And this is a silence issue. This is not a factual
13 dispute, this is --

14 THE COURT: You mean there's going to be testimony
15 about the pharmaceutical compounds?

16 MR. BRAFMAN: There may very well be. I appreciate
17 you don't want to --

18 THE COURT: I'm just trying to understand. You know
19 the case better than I do.

20 MR. BRAFMAN: Yes. Mr. Shkreli's silence is going
21 to be part of his defense. It's going to come in through a
22 number of different witnesses who he spoke to about it and
23 it's going to come in -- if he testifies, they said it's fair
24 game.

25 And I think that this man's expertise makes him

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1 different than any other juror we've interviewed and I press
2 the challenge for cause, respectfully.

3 MS. KASULIS: We continue to object. Your Honor is
4 very familiar with the charges in this case.

5 There is some aspect of pharmaceutical science, but
6 that's by no means the central focus. And I don't see how his
7 expertise, his educational or occupational background, would
8 preclude him from being a fair and impartial juror.

9 THE COURT: He is about as committed to being, and
10 he said it repeatedly in so many different ways, fair and to
11 confine himself, to the best of his ability, without carving
12 out part of his memory bank to deciding the case based on the
13 evidence.

14 Every juror is called upon to look to their life
15 experience and decide on credibility. And a juror might say
16 people who don't make eye contact or people who make certain
17 nervous gestures are not worthy of credibility. That's based
18 on their own experience that they're applying. And I
19 understand this is a specialized area of knowledge, but
20 it's -- I'm just not convinced that there is grounds to
21 exclude him, sir.

22 So, respectfully, I will deny the request to exclude
23 for cause.

24 (Prospective juror joins sidebar.)

25 THE COURT: Sir, you may return to your seat. Thank

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1 you.

2 (Prospective juror excused.)

3 (In open court.)

4 THE COURT: Did anyone else -- why don't you come
5 forward, sir?

6 (Continued on next page.)

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LAM

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RPR

1 (The following occurred at sidebar.)

2 THE COURT: You are Juror No. 14. Come forward.

3 (Prospective juror present at sidebar.)

4 THE COURT: Come forward. Yes, sir.

5 THE PROSPECTIVE JUROR: I'm familiar with the SEC,
6 I'm an accounting student. I use the website often in my
7 learning experience.

8 THE COURT: You use the SEC website.

9 THE PROSPECTIVE JUROR: Yes. That's correct.

10 THE COURT: Have you ever conducted an SEC-related
11 audit or prepared any documents for the SEC?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Have you ever participated in any SEC
14 hearing?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Your profession is a CPA?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: What do you do?

19 THE PROSPECTIVE JUROR: I'm doing a master's of
20 science in accounting right now.

21 THE COURT: In accounting?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Have you worked in the financial world?

24 THE PROSPECTIVE JUROR: No, back home, I worked in
25 finance back in Guyana.

1 THE COURT: Okay. In what capacity?

2 THE PROSPECTIVE JUROR: I was a bookkeeper.

3 THE COURT: Thank you. Let me ask you to step back.

4 THE PROSPECTIVE JUROR: I want to mention I served
5 jury duty last year.

6 THE COURT: You had a piece of paper. Do you want
7 to show it to me?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: I think you showed me a state court
10 letter, yes. Sir, this is Kings County, which is the county.
11 This is federal court. Although you might have served jury
12 duty in the past, this is the County of Kings, this is federal
13 court. Unfortunately, I don't think you get credit against
14 your jury duty in federal court.

15 THE PROSPECTIVE JUROR: Yes, ma'am.

16 THE COURT: Is there any other reason or anything
17 else that you want to bring to our attention?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: Let me ask you to step back.

20 (Prospective juror leaves sidebar.)

21 MR. AGNIFILO: I think he is supposed to get two
22 years after state court. He is actually not qualified not to
23 serve. It is six years from state to state. It is two years
24 from state to federal. I'm not that sure.

25 THE COURT: So you think he shouldn't be here?

1 THE COURTROOM DEPUTY: He served recently in the
2 last six years, he should be excused, if he has his proof of
3 service.

4 THE COURT: Do you want to then --

5 THE COURTROOM DEPUTY: We can confirm it with jury
6 clerk.

7 MR. BRAFMAN: He has the letter.

8 THE COURT: Juror No. 14, I believe.

9 If you do state, you get a pass in federal court?

10 MS. ZELLAN: For two years.

11 (Prospective juror present at sidebar.)

12 THE COURT: We are going to check on what you said
13 about your jury service. Did you show this to them when you
14 showed up?

15 THE PROSPECTIVE JUROR: I did.

16 THE COURT: Let me just check.

17 (Pause.)

18 THE COURT: I'm sorry you didn't get very far. Come
19 forward. We have confirmed with the jurors' clerk downstairs
20 that he will be subject to be excused from this panel. Go
21 back to the second floor. Tell them that you have been
22 excused and you had prior jury service in the last year.
23 Thank you, sir.

24 (Prospective juror excused.)

25 THE COURT: So that was Juror No. 14.

1 THE COURTROOM DEPUTY: Juror No. 63 is here.

2 THE COURT: 63. Juror No. 63 was the person who --
3 was she the one with the doctor's appointment from yesterday?

4 THE LAW CLERK: Yes.

5 MS. ZELLAN: First number 63, Your Honor.

6 THE COURT: The name is here (indicating). Now the
7 question is -- I can't remember where we left off. I think I
8 only got to the question of inconvenience and bias based on
9 media reports. I can try to catch her up, but I would hate to
10 hold these other jurors. I would like to get her up to speed.
11 Let me just grab my notes and see what other questions.
12 Sorry.

13 Alternatively, we will continue and then we will ask
14 her those questions at the end if she is still here with us.

15 (In open court.)

16 THE COURT: Did anyone else have their hand up?
17 Come forward, please.

18 (Prospective juror present at sidebar.)

19 THE COURT: What is your number?

20 THE PROSPECTIVE JUROR: 20.

21 THE COURT: 20, yes, ma'am.

22 THE PROSPECTIVE JUROR: Yes. I work for an
23 economist. I am associated with some of the companies that
24 you listed.

25 THE COURT: Like Merrill Lynch?

1 THE PROSPECTIVE JUROR: Merrill Lynch, UPS, second
2 and both of January associates.

3 THE COURT: Is there anything about that work or
4 your experience towards those companies that would influence
5 your ability to be fair to both sides and to consider only the
6 evidence that comes to you in this trial?

7 THE PROSPECTIVE JUROR: I don't think so.

8 THE COURT: All right. Can you tell us what you do?

9 THE PROSPECTIVE JUROR: I am an administrative
10 assistant, one of the office managers for Henry Kaufman &
11 Company.

12 THE COURT: And you are an administrative assistant
13 to him?

14 THE PROSPECTIVE JUROR: Uh-hum.

15 THE COURT: Do you have an economic background
16 yourself?

17 THE PROSPECTIVE JUROR: Well, I work with all of the
18 background stuff with him. I have been with him for 21 years.

19 THE COURT: Have you studied economics or
20 accounting?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Have you studied finance?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: I am going to ask you to step back for a
25 second.

1 (Prospective juror leaves sidebar.)

2 THE COURT: This is Juror No. 20.

3 MR. BRAFMAN: I have no questions.

4 THE COURT: Thank you for letting us know.

5 Ma'am, you can resume your seat.

6 (In open court.)

7 THE COURT: Was there anybody else who had their
8 hand up? Yes, the gentleman on the far left, second row, come
9 forward. Give us your number, please.

10 THE PROSPECTIVE JUROR: 33.

11 THE COURT: Thank you.

12 (Prospective juror present at sidebar.)

13 THE COURT: Thank you. You have been very patient.
14 You were here since yesterday morning.

15 THE PROSPECTIVE JUROR: I am familiar with three of
16 the names, Amgen. I used to be a shareholder back in the
17 '80s. They sold it back in '87. Secondly, Cowen Company, I
18 used to be a mortgage bond broker back in the '90s. They are
19 one of our competitors. I worked for Garban at the time.
20 Bank of America, they own Merrill Lynch, so, but I work on the
21 Bank of America side.

22 THE COURT: Do you work for Bank of America?

23 THE PROSPECTIVE JUROR: I do. I'm in the IT
24 department. I'm a project manager for IT.

25 THE COURT: I know you have been here since

1 yesterday morning, so you have not raised your hand previously
2 about media or the six weeks jury service, correct?

3 THE PROSPECTIVE JUROR: Correct.

4 THE COURT: Would you be able to listen to the
5 evidence carefully in this case with a fair and open mind to
6 anything that you might have been exposed to with regard to
7 these companies that you have mentioned and decide this case
8 based only on the evidence?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you. Let me ask you to take a
11 step back.

12 (Prospective juror leaves sidebar.)

13 THE COURT: Any issues for this juror?

14 MR. BRAFMAN: No, Your Honor.

15 MS. KASULIS: No.

16 THE COURT: Thank you, sir. You can resume your
17 seat. Thank you.

18 (Prospective juror leaves sidebar.)

19 THE COURT: I am going to reconsider my decision to
20 deny your request to dismiss Juror number -- was it No. 5?
21 The pharmacist for cause. I think, you know, it is -- I think
22 he wants to talk to people about what he knows, and despite
23 his best efforts to listen to my orders, I think it would be
24 very difficult for him to not speak to other jurors about his
25 knowledge based on his expertise or experience that he knew

1 something different from what was in the record, so I am going
2 to strike Juror No. 5.

3 MR. BRAFMAN: Thank you very much.

4 THE COURT: I will let him know.

5 I am going to ask my clerk to let him know. Let me
6 call him up.

7 (In open court.)

8 THE COURT: Juror No. 5, can you come back, please.

9 (Prospective juror present at sidebar.)

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: I have decided to excuse you. I want to
12 thank you for your candor.

13 THE PROSPECTIVE JUROR: You are quite welcome. I
14 should go back downstairs?

15 THE COURT: Yes, let me know on the second floor
16 that you have been excused.

17 (Prospective juror excused.)

18 (In open court.)

19 THE COURT: Did anyone else have their hand up? The
20 gentleman in the second row in the blue shirt, come up,
21 please.

22 (Prospective juror present at sidebar.)

23 THE COURT: This is Juror No. 34. Yes, sir.

24 THE PROSPECTIVE JUROR: I thought I heard two
25 companies, Merrill Lynch was one, which I am familiar from,

1 you know, the business and their advertising. SEC, Securities
2 and Exchange Commission, and then I am familiar because a
3 number of years ago I was an independent rep for HD Vest
4 mutual funds and annuity products and I had to be licensed and
5 I took the Series 6 test. I studied SEC regulations.

6 THE COURT: Okay, so, let's back up. Did you
7 mention Turing?

8 THE PROSPECTIVE JUROR: No, Merrill Lynch.

9 THE COURT: Merrill Lynch, SEC.

10 THE PROSPECTIVE JUROR: That's it.

11 THE COURT: That's it. So are you currently
12 licensed?

13 THE PROSPECTIVE JUROR: No. That was a number of
14 years back.

15 THE COURT: What type of work do you do?

16 THE PROSPECTIVE JUROR: Now I am retired.

17 THE COURT: Before you retired, what type of work
18 did you do?

19 THE PROSPECTIVE JUROR: Worked for New York State
20 Office of Children and Family Services.

21 THE COURT: In what capacity?

22 THE PROSPECTIVE JUROR: I was director of -- I was
23 Deputy Regional Director of the office -- the New York City
24 regional office.

25 THE COURT: Now, you are familiar with Merrill

1 Lynch. How does --

2 THE PROSPECTIVE JUROR: Merrill Lynch, I'm just
3 familiar from --

4 THE COURT: You just know the name?

5 THE PROSPECTIVE JUROR: -- advertising.

6 THE COURT: Have you invested in Merrill Lynch?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: Do you have current investments with
9 Merrill Lynch?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: What about the SEC?

12 THE PROSPECTIVE JUROR: The SEC was when I worked --
13 I had an independent business from '96 to 2000 with HD Vest as
14 an independent rep and I had to be licensed and I had to study
15 and follow the SEC regulations.

16 THE COURT: I see. All right. Okay. Thank you.
17 Let me ask you this question: To the extent there may be
18 evidence regarding financial matters in this case, would you
19 be able to commit to maintaining a fair and open mind toward
20 both parties and decide this case based on the evidence in
21 this case and not on anything that you might have studied or
22 become familiar with?

23 THE PROSPECTIVE JUROR: I think I could.

24 THE COURT: All right. Thank you. Let me ask you
25 to step back.

1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: I have no questions.

3 THE COURT: No issues? Okay.

4 Thank you, sir. You can resume your seat.

5 (In open court.)

6 THE COURT: Is there anyone else who had their hand
7 up? Yes, ma'am. Please come forward.

8 (Prospective juror present at sidebar.)

9 THE COURT: Hi, would you please give me your
10 number?

11 THE PROSPECTIVE JUROR: 38.

12 THE COURT: This is Juror No. 38. Yes, ma'am.

13 THE PROSPECTIVE JUROR: Until about eight years ago
14 I was a representative of the SEC Commission. I sold mutual
15 funds to a company called PSF Investments.

16 THE COURT: Did you have some sort of a license?

17 THE PROSPECTIVE JUROR: Yes, I took the Series 6 and
18 Series 63.

19 THE COURT: This is Juror No. 38.

20 MR. BRAFMAN: Thank you, Judge.

21 THE COURT: Ma'am, in this case, we ask all jurors
22 to keep an open and fair mind toward both parties. I had
23 described the case to you as involving charges of securities
24 fraud. Would your past experience have any effect on your
25 ability to sit as a fair, open-minded and impartial juror in

1 this case?

2 THE PROSPECTIVE JUROR: Absolutely not.

3 THE COURT: Would you be able to commit to listening
4 carefully to all of the evidence in this case and to decide in
5 this case with your fellow jurors based solely on the evidence
6 presented at the trial?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: And would you have any difficulty -- is
9 there anything about your past training and experience in the
10 financial world that would interfere with your ability to
11 focus and consider the case based on the evidence?

12 THE PROSPECTIVE JUROR: No, there is not.

13 THE COURT: Thank you, ma'am. I will ask you to
14 take two steps.

15 (Prospective juror leaves sidebar.)

16 MR. BRAFMAN: No questions.

17 MS. KASULIS: No questions.

18 (Prospective juror present at sidebar.)

19 THE COURT: Thank you. Ma'am, thank you. You can
20 return to your seat.

21 (Prospective juror leaves sidebar.)

22 (In open court.)

23 THE COURT: Who else had their hand up? Come
24 forward, sir.

25 (Prospective juror present at sidebar.)

1 THE COURT: Hello, sir, what is your number?

2 THE PROSPECTIVE JUROR: 39.

3 THE COURT: Juror No. 39. This is you?

4 THE PROSPECTIVE JUROR: That's me.

5 THE COURT: Thank you, sir.

6 THE PROSPECTIVE JUROR: I am familiar with what the
7 SEC is. I have read and seen some news reports about Turing
8 and Valeant. I know -- I believe Amgen is a component of an
9 index fund that I have owned.

10 THE COURT: All right. Well, based on what you have
11 seen and read, have you formed any opinions that would
12 interfere with your ability to be fair and open-minded and
13 impartial to both sides in this case?

14 THE PROSPECTIVE JUROR: No, I don't believe so.

15 THE COURT: Now, do you have familiarity with the
16 financial world? Have you worked in that?

17 THE PROSPECTIVE JUROR: I have not worked in that.
18 I read some personal finance publication.

19 THE COURT: What is it that you do, without telling
20 us where you work?

21 THE PROSPECTIVE JUROR: I work for a college
22 publisher.

23 THE COURT: Publishing textbooks and things like
24 that?

25 THE PROSPECTIVE JUROR: That's correct.

1 THE COURT: And then your reading about the
2 financial world is based on your own curiosity or own
3 investments?

4 THE PROSPECTIVE JUROR: Correct.

5 THE COURT: It's not part of your job?

6 THE PROSPECTIVE JUROR: No, not at all.

7 THE COURT: Would you be able to decide this case
8 with a fair and open mind to both sides and decide it based on
9 only on the evidence presented at trial?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Let me ask you to take a step back,
12 please.

13 (Prospective juror leaves sidebar.)

14 THE COURT: Any issues with this juror?

15 MR. BRAFMAN: No.

16 MS. KASULIS: No.

17 THE COURT: You may resume your seat.

18 (In open court.)

19 THE COURT: Is there anyone else who had their hand
20 up?

21 (The following occurred at sidebar.)

22 THE COURT: I think what we will do is continue and
23 if she is still here at the end of the questioning, we will
24 deal with it then. Thank you.

25 (In open court.)

1 THE COURT: I will next read you a list of some
2 locations and medications. Please raise your hand if you are
3 familiar with these locations or medications.

4 330 Madison Avenue, New York, New York. 777 Third
5 Avenue, New York, New York. Daraprim, Chenodal, Thiola. If
6 you are familiar with these places or medications, please
7 raise your hand.

8 Juror number --

9 THE PROSPECTIVE JUROR: 19.

10 THE COURT: I'm sorry.

11 THE PROSPECTIVE JUROR: 19.

12 THE COURT: You are familiar with some of these?

13 THE PROSPECTIVE JUROR: 330 Madison.

14 THE COURT: With the medication?

15 THE PROSPECTIVE JUROR: No, with the location.

16 THE COURT: What is your familiarity with which
17 address, 330 Madison or 777 Third Avenue?

18 THE PROSPECTIVE JUROR: 330 Madison.

19 THE COURT: In New York?

20 THE PROSPECTIVE JUROR: Yeah.

21 THE COURT: How do you know that address, sir?

22 THE PROSPECTIVE JUROR: Because we had a client in
23 there. I used to work -- I used to deliver there.

24 THE COURT: You used to go there as part of your
25 job?

1 THE PROSPECTIVE JUROR: Yeah.

2 THE COURT: Is there anything about that location
3 that would have any adverse effect on your ability to sit in
4 this case?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Thank you.

7 Do any of you have a background in the law?

8 MR. BRAFMAN: Your Honor.

9 THE COURT: I'm sorry, we have another juror. Your
10 number, ma'am.

11 THE PROSPECTIVE JUROR: 55.

12 Would you repeat the medicine again?

13 THE COURT: Yes, ma'am, I will.

14 Daraprim, Chenodal, C-H-E-N-O-D-A-L, and Thiola,
15 T-H-I-O-L-A.

16 THE PROSPECTIVE JUROR: No. Thank you.

17 THE COURT: Is anyone familiar with those
18 medications? No.

19 The next question is do you have a background in
20 the law? Have you taken courses in the law, worked with an
21 attorney or law firm, worked for a judge or in a courthouse,
22 worked for a prosecutor, worked form a criminal defense
23 attorney or private investigator or have relatives or close
24 friends who are lawyers, worked for lawyers in any of the
25 positions or worked in any of the positions I have mentioned?

1 All right. For those of you who have raised your
2 hand, the question is would you be able to put anything that
3 you learned about the law out of your mind and accept and
4 apply only the Court's instructions on the law in this case?

5 Is there anybody who cannot do that? Please raise
6 your hand. All right.

7 Is there anyone here who would not be able to follow
8 my instructions on the law even if you may have disagreed with
9 those instructions?

10 Has anyone ever hired or consulted a lawyer for any
11 reason? Please raise your hand.

12 All right. Would you tell me what your experience
13 has been, what the situation was that led you to hire a
14 lawyer, and if so, whether that experience was satisfactory.

15 I saw that Juror No. 4 had their hand up.

16 Have you hired a lawyer before?

17 THE PROSPECTIVE JUROR: I have hired one for prenu
18 and hired another one for real estate.

19 THE COURT: Is there anything about that experience
20 with your lawyer that would impair your ability to sit as a
21 fair and impartial juror in this case?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: Do you have any biased feelings in favor
24 of or against lawyers?

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: Was there anyone else in the second row,
2 third row or fourth row? All right.

3 We have Juror No. 26. Have you hired a lawyer
4 before, ma'am?

5 THE PROSPECTIVE JUROR: Just to do an estate
6 planning thing.

7 THE COURT: Is there anything about that experience
8 with the lawyer for estate planning that would affect your
9 ability to be fair and impartial? Do you have any negative or
10 positive feelings about lawyers as a result of that
11 experience?

12 THE PROSPECTIVE JUROR: No. I'm sorry, no.

13 THE COURT: Thank you.

14 Was there anyone in the second row?

15 There is somebody in the first row. This would be
16 Juror No. 27.

17 THE PROSPECTIVE JUROR: Real estate.

18 THE COURT: You hired a lawyer to do real estate
19 matters for you?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Did you have a satisfactory experience
22 with the lawyer?

23 THE PROSPECTIVE JUROR: Excuse me?

24 THE COURT: Was your experience with that lawyer
25 satisfactory?

1 THE PROSPECTIVE JUROR: Yes, it was. Yes.

2 THE COURT: Do you have any negative or positive
3 feelings about lawyers?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Thank you.

6 Anyone else on that row? Are you Juror No. 29?

7 THE PROSPECTIVE JUROR: 31. It was an accident
8 case.

9 THE COURT: I'm sorry, ma'am.

10 THE PROSPECTIVE JUROR: One was an accident case and
11 one was a divorce case.

12 THE COURT: In those experiences, did you have a
13 satisfactory experience with the lawyers?

14 THE PROSPECTIVE JUROR: Yes, I did.

15 THE COURT: Do you have any negative feelings about
16 lawyers, ma'am?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: No?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: Anyone in the second row? We are
21 looking at Juror No. 33.

22 THE PROSPECTIVE JUROR: 33. Purchasing property and
23 estate planning.

24 THE COURT: The same question, do you have any
25 feelings about lawyers that are negative or that would affect

1 your ability to be fair?

2 THE PROSPECTIVE JUROR: Everything was fine.

3 THE COURT: All right. Thank you. I will ask you,
4 please, everybody please speak up as loudly as you can.

5 Anybody else in the row? Juror No. 34, yes, sir.

6 THE PROSPECTIVE JUROR: I want to come up.

7 THE COURT: You want to come to sidebar, of course.

8 (The following occurred at sidebar; prospective
9 juror present.)

10 THE PROSPECTIVE JUROR: Two experiences: One with
11 bankruptcy and the other with immigration. The bankruptcy
12 experience was fine. The immigration situation did not -- I
13 married someone from another country. I had a problem with
14 immigration and the lawyer. The attorney was not able to
15 resolve it.

16 THE COURT: Okay.

17 THE PROSPECTIVE JUROR: And since my wife had to
18 wait six years to be able to come, I had a bit of an
19 experience with that.

20 THE COURT: Well, would that experience with your
21 immigration lawyer have any effect on your ability to be fair
22 and impartial in this case where we have lawyers all over the
23 place?

24 THE PROSPECTIVE JUROR: I'm not sure because the
25 experience was negative and I spent a lot of money on it.

1 THE COURT: So will you have negative feelings about
2 lawyers in general that would impede your ability to sit in
3 this case?

4 THE PROSPECTIVE JUROR: Well, I might have some
5 feelings based on this particular lawyer.

6 THE COURT: Okay. Well, do you have a sense about
7 the trustworthiness of lawyers based on your experience that
8 would interfere with your ability?

9 The lawyers in this case obviously are not witnesses
10 and what they say is not evidence. They will be presenting
11 evidence. Do you have any reason to hesitate in considering
12 evidence proffered by a lawyer in this case?

13 THE PROSPECTIVE JUROR: Well, back to that
14 experience, I felt that the -- that the -- the lawyer made a
15 misrepresentation, he made it sound like that he could resolve
16 the issue. Again, I don't think he properly handled it and
17 that's why it was not resolved.

18 THE COURT: Did you end up in a lawsuit with the
19 lawyer?

20 THE PROSPECTIVE JUROR: No. My wife didn't want to
21 proceed. Once she came here, she didn't want to proceed. I
22 was upset about it.

23 THE COURT: Let me ask you to step back a couple of
24 feet, please.

25 (Prospective juror leaves sidebar.)

1 MS. KASULIS: There is the advice of counsel defense
2 in this case.

3 MR. BRAFMAN: It is an advice of counsel defense
4 issue. If you are going to keep him, you are going to have to
5 tell him there are lawyers.

6 THE COURT: He has a general distrust of lawyers.

7 MR. BRAFMAN: I would ask you to excuse him, Your
8 Honor.

9 MS. KASULIS: I have no objection.

10 THE COURT: We will excuse Juror No. 34.

11 (Prospective juror present at sidebar.)

12 THE COURT: We are going to excuse you. Thank you.
13 If you can go down to the second floor, to the jury room and
14 tell them that you have been excused.

15 (Prospective juror excused.)

16 (In open court.)

17 THE COURT: Is there anyone else who has experience
18 with lawyers?

19 Your number, ma'am?

20 THE PROSPECTIVE JUROR: 38.

21 THE COURT: Can you please tell us what your
22 experience was with the lawyer?

23 THE PROSPECTIVE JUROR: Divorce attorney, prenuptial
24 attorney and estate planning attorney.

25 THE COURT: All right. And did you feel that you

1 received satisfactory legal service from those attorneys?

2 THE PROSPECTIVE JUROR: Except for one.

3 THE COURT: Well, except for one attorney, would
4 that sense that when a lawyer does not serve you well, would
5 that affect your ability to be fair and impartial in this
6 case?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: Who else? Just let me go to the
9 gentleman in the blue shirt.

10 (Continued on next page.)
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1 THE COURT: What is your number?

2 THE PROSPECTIVE JUROR: It was an accident.

3 THE COURT: An accident? Can you stand and speak,
4 please. Your number was?

5 THE PROSPECTIVE JUROR: 45.

6 THE JUROR: You had an accident and you hired a
7 lawyer?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: And were you satisfied with your
10 lawyer's services?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Is there anything about that experience
13 with your lawyer that would make it difficult for you to be
14 fair and impartial in this case?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: All right. Thank you.

17 Was there a gentleman who also had his hand up?
18 Your number, sir? Can you please stand?

19 THE PROSPECTIVE JUROR: 41.

20 THE COURT: Yes.

21 THE PROSPECTIVE JUROR: I was assigned one for an
22 accident. I was assigned one by my insurance company.

23 THE COURT: You were assigned a lawyer by your
24 insurance company?

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: And this was arising out of an
2 automobile accident?

3 THE PROSPECTIVE JUROR: That's correct.

4 THE COURT: Were you satisfied with the services you
5 received?

6 THE PROSPECTIVE JUROR: Absolutely.

7 THE COURT: Thank you, sir.

8 Is there anyone else in your row who had their hand
9 up? Now we have a gentleman.

10 Yes, sir. Your number?

11 THE PROSPECTIVE JUROR: 40.

12 THE COURT: Yes, sir, number 40.

13 THE PROSPECTIVE JUROR: A real estate and an
14 accident.

15 THE COURT: All right. Were you satisfied with the
16 services of your lawyer in the real estate and accident
17 situation?

18 THE PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: Thank you, sir.

20 Anyone else?

21 Yes. Would you give your number, please?

22 THE PROSPECTIVE JUROR: 50.

23 THE COURT: Yes, sir. Number 50.

24 THE PROSPECTIVE JUROR: I had a workers' comp
25 attorney.

Side Bar

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1 THE COURT: Were you satisfied with your attorney's
2 services in the workers' comp arena?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: All right. Anyone else?
5 Juror Number 1?

6 THE PROSPECTIVE JUROR: Yes. Divorce attorney.

7 THE COURT: A divorce attorney?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Were you satisfied with the services you
10 received?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Does anybody have any negative -- I'm
13 sorry. Yes, ma'am. Your number?

14 THE PROSPECTIVE JUROR: 58.

15 THE COURT: Would you just stand so we can hear you.

16 THE PROSPECTIVE JUROR: I want to come over there.

17 THE COURT: You want to come to side bar? All
18 right. I'll get to you in a moment.

19 (The following occurred at side bar; prospective
20 juror joins.)

21 THE PROSPECTIVE JUROR: I have experience with an
22 attorney. My son was arrested last year for possession with
23 intent to sell heroin at school and I had very good
24 representation and I'm still fighting it and I'm still going
25 to court and I am -- I have to admit, I'm not really feeling

CMH

OCR

RMR

CRR

FCRR

Side Bar

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1 good about this case because of my situation with the heroin
2 and all the legalities that I'm dealing with.

3 THE COURT: All right.

4 THE PROSPECTIVE JUROR: So that's my --

5 THE COURT: No. This is important for you to tell
6 us.

7 As a result of that experience that was ongoing,
8 have you formed any opinions about the criminal justice system
9 or about law enforcement or about defense lawyers or about
10 folks who are involved in criminal prosecutions that would
11 interfere with your ability to be fair and impartial in this
12 case?

13 THE PROSPECTIVE JUROR: It's so hard to say because
14 I'm so mixed up in my own stuff right now, I can't say, oh, I
15 hate attorneys or anything like that. I'm just, I'm just --
16 I'm going to cry.

17 THE COURT: I'm sorry. It must have been a
18 difficult situation for you.

19 THE PROSPECTIVE JUROR: Yes. I don't know if
20 affects this, but I just want you to know.

21 THE COURT: I appreciate that. Would you be able to
22 focus on the evidence in this case?

23 THE PROSPECTIVE JUROR: Probably not. I have to be
24 honest with you. I couldn't say this morning that I saw the
25 news or I read the paper, but I have heard about this

CMH

OCR

RMR

CRR

FCRR

Side Bar

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1 gentleman.

2 THE COURT: Okay.

3 THE PROSPECTIVE JUROR: And I am a nurse and I kind
4 of have my own opinion already.

5 THE COURT: All right. Well, thinking people like
6 yourself do have opinions about things that are in the news so
7 the question is --

8 THE PROSPECTIVE JUROR: I don't think, I don't
9 think --

10 THE COURT: Let me just finish my question.

11 THE PROSPECTIVE JUROR: I'm sorry.

12 THE COURT: Would your opinion, based on what you
13 have heard about this case, affect your ability to be fair to
14 both sides?

15 THE PROSPECTIVE JUROR: I do.

16 THE COURT: Okay. You would have a difficult time
17 being fair, is that what you're saying?

18 THE PROSPECTIVE JUROR: I would have a difficult
19 time being fair to --

20 THE COURT: The defendant?

21 THE PROSPECTIVE JUROR: The defendant.

22 THE COURT: Okay. All right. All right. Well,
23 thank you for telling us that. Let me have you step back for
24 one moment.

25 (Prospective juror leaves side bar.)

CMH

OCR

RMR

CRR

FCRR

Side Bar

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1 MR. BRAFMAN: I consent.

2 THE COURT: Juror 58. Strike for cause?

3 MS. KASULIS: Yes.

4 MR. BRAFMAN: What number?

5 THE COURT: 58.

6 (Prospective juror joins side bar.)

7 THE COURT: Ma'am, come forward.

8 Thank you. You are number 58, right?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: We are going to excuse you. I will ask
11 you to please report to the second floor jury room where you
12 checked in this morning and let them know you have been
13 excused. I hope everything works out for you.

14 THE PROSPECTIVE JUROR: Thank you so much.

15 (Prospective juror excused.)

16 (In open court.)

17 THE COURT: There was a woman. Your number?

18 THE PROSPECTIVE JUROR: My number is 55.

19 THE COURT: Would you like to speak from where you
20 are or come to side bar?

21 THE PROSPECTIVE JUROR: I'm going to need to come to
22 side bar.

23 (Side bar continues; prospective juror joins.)

24 THE COURT: Yes, ma'am.

25 THE PROSPECTIVE JUROR: I was a petitioner in a

1 case.

2 THE COURT: Okay. What were you petitioning for?

3 THE PROSPECTIVE JUROR: To sue my former job.

4 THE COURT: So you had a complaint against your
5 employer?

6 THE PROSPECTIVE JUROR: That is correct.

7 THE COURT: Were you represented by a lawyer?

8 THE PROSPECTIVE JUROR: I was.

9 THE COURT: Okay.

10 THE PROSPECTIVE JUROR: And at the time, he worked
11 for a firm and then he also broke off from the firm and did
12 his own practice and I stayed with him as opposed to the firm.

13 THE COURT: Okay.

14 THE PROSPECTIVE JUROR: I did have a negative
15 experience with the firm, but I don't feel that it would alter
16 my ability, but I wanted to disclose it.

17 THE COURT: Okay. I appreciate that. Did you
18 resolve your issues with your employer?

19 THE PROSPECTIVE JUROR: Yes, we settled.

20 THE COURT: Okay. And is your employer a federal,
21 state or local Government entity?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Would you feel comfortable telling us
24 what the employer, who the employer was?

25 THE PROSPECTIVE JUROR: I'm comfortable. Are you

Side Bar

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1 asking me?

2 THE COURT: Yes.

3 THE PROSPECTIVE JUROR: County of Nassau.

4 THE COURT: And what did you do for the County of
5 Nassau?

6 THE PROSPECTIVE JUROR: I was the program supervisor
7 for affirmative action.

8 THE COURT: Are you still employed there, ma'am?

9 THE PROSPECTIVE JUROR: No.

10 THE COURT: Are you currently employed?

11 THE PROSPECTIVE JUROR: I am.

12 THE COURT: Are you employed by a private or public
13 entity?

14 THE PROSPECTIVE JUROR: A public entity.

15 THE COURT: Okay. And is it also a county
16 organization?

17 THE PROSPECTIVE JUROR: No, it's not a county.

18 THE COURT: State or city?

19 THE PROSPECTIVE JUROR: Quasi state.

20 THE COURT: Okay. Now, based on your experience in
21 the complaint that you filed against your former employer, do
22 you have any negative feelings about lawyers or the justice
23 system?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Okay. Let me ask you to just

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Side Bar

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1 step back one second, please.

2 (Prospective juror leaves side bar.)

3 THE COURT: Are there any other questions?

4 MR. BRAFMAN: No, ma'am.

5 MS. SMITH: No.

6 (Prospective juror joins side bar.)

7 THE COURT: Ma'am, can you resume your seat. Juror
8 Number 55.

9 (Prospective juror leaves side bar.)

10 (In open court.)

11 THE COURT: Any other?

12 Yes, ma'am. What is your number?

13 THE PROSPECTIVE JUROR: 61. Okay. Come forward,
14 ma'am. Thank you.

15 (Side bar continues; prospective juror joins.)

16 THE PROSPECTIVE JUROR: My family has an attorney.
17 My dad was being charged with a criminal offense. He was
18 defending himself, but he hit somebody with a broomstick so
19 they considered it --

20 THE COURT: An assault?

21 THE PROSPECTIVE JUROR: An assault. I didn't have a
22 bad experience with the attorney, but just someone being
23 charged and not knowing all the parameters around it. I might
24 be more compassionate with a charge because of that, because
25 of the experience I had with my father. I think it was a

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Side Bar

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1 charge, but I'm just, like, sharing that information so you
2 guys are aware.

3 THE COURT: We appreciate that.

4 Well, was this a state charge, State of New York?

5 THE PROSPECTIVE JUROR: Yes. It happened maybe,
6 like, it was within the year, like, 2016. So very recent.

7 THE COURT: I see. Okay. And it has been resolved?

8 THE PROSPECTIVE JUROR: It has been resolved and
9 everything worked out.

10 THE COURT: Okay.

11 THE PROSPECTIVE JUROR: But when you asked, I
12 thought about it, it does bring up feelings from my, being
13 from the family side and having someone accused of something.

14 THE COURT: Do you -- would you be able to set it
15 aside in this case, the prosecution?

16 THE PROSPECTIVE JUROR: I will try my best to do so
17 but I do want you guys to know that because, you know, I don't
18 that it would trigger anything. I'm just being honest about
19 it.

20 THE COURT: I appreciate it. Do you have any views
21 about law enforcement or prosecutors or defense lawyers as a
22 result of that experience that would interfere with your
23 ability to be fair?

24 THE PROSPECTIVE JUROR: I don't have any real
25 negative views but my uncle has immigration problems too. So,

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Side Bar

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1 it's just like, again, with the court and again. So, I would
2 do my best to be as fair as possible but the part, when you
3 asked that question, I had to think about it and I got
4 emotional about the situation so that's why I decided to bring
5 that to you guys' attention.

6 THE COURT: Thank you. I appreciate it very much.
7 I know it's difficult to talk about, but it's important for
8 you to be forthright with us. Thank you. Just take two steps
9 back.

10 (Prospective juror leaves side bar.)

11 THE COURT: Does anyone have any follow-up
12 questions?

13 MS. KASULIS: She keeps saying "I'll try my best."
14 I think we need definitive answers as to whether she can.

15 THE COURT: Right.

16 (Prospective juror joins side bar.)

17 THE COURT: Ma'am, I appreciate, we all appreciate
18 you trying your best. The question is are you confident that
19 you could be fair minded and to both sides of this case, keep
20 an open mind and listen to the evidence, consider it carefully
21 and decide this case based on the evidence at trial and follow
22 my instructions? Could you do that?

23 Let me ask if you are confident that you can do that
24 given your experience.

25 THE PROSPECTIVE JUROR: How I feel right now, no,

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1 but I, I am a very open-minded person.

2 THE COURT: Okay. Well, how you feel right now, is
3 it because it's in the afternoon, is it a momentary thing or
4 do you think you'll continue?

5 THE PROSPECTIVE JUROR: It might be momentary. Like
6 I said, I'm thinking about what we went through in 2016. It
7 is making me upset so I'm just --

8 THE COURT: I'm sorry. I understand. I appreciate
9 you telling us. The question is as a juror, could you
10 maintain an open and fair mind to both parties and whether or
11 not the criminal justice system that this case is a part of,
12 would you accept the principles I told you about, the
13 presumption of innocence, the burden of proof and your role in
14 deciding the facts and following the law?

15 THE PROSPECTIVE JUROR: I say yes. I'll say yes.

16 THE COURT: All right. Would the experience your
17 father and your uncle had, would that interfere or intrude in
18 some way or bring up memories of their case?

19 THE PROSPECTIVE JUROR: I mean, I'm telling you that
20 because I fear it may be a concern. That's why I'm saying it.
21 It may be. I'm not 100 percent.

22 THE COURT: Okay. Okay. Well, thank you. I really
23 appreciate your disclosing that. I will ask you to step back
24 for a second.

25 THE PROSPECTIVE JUROR: Okay.

Side Bar

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1 (Prospective juror leaves side bar.)

2 MS. KASULIS: We object, Your Honor, for cause,
3 strike her for cause. We make a motion to strike her for
4 cause.

5 THE COURT: Based upon?

6 MS. KASULIS: I think she wants to be fair and
7 impartial, but I don't think she is just based on her
8 reluctance to answering. She got emotional when she was
9 talking about her experience in the criminal justice system.
10 I feel like she wants to be able to say that she is but I
11 don't think she is based on what she said, her demeanor, her
12 hesitancy of answering the question.

13 THE COURT: The fact that she volunteered to come up
14 here and disclose something that is obviously very painful to
15 her, I do think that she was trying very hard and would try
16 very hard to be fair. The situation involving her relatives
17 seems very far divorced from what we have in this case. She
18 hasn't said that she favors either the prosecution or the
19 defendants, I don't think.

20 MS. KASULIS: I think she said she felt compassion
21 towards defendant so she does have a bias towards the defense
22 because she had the experience of being a defendant.

23 THE COURT: Let me ask her.

24 (Prospective juror joins side bar.)

25 THE COURT: Ma'am, thank you.

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Side Bar

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1 Do you have any feelings about prosecutors and law
2 enforcement?

3 THE PROSPECTIVE JUROR: Negative? No. No.

4 THE COURT: Negative. Would you feel that your
5 sense of compassion towards someone charged with an offense
6 would interfere with your ability to fairly evaluate the
7 evidence in this case?

8 THE PROSPECTIVE JUROR: That's the concern I have.

9 THE COURT: So the answer is yes, you would?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Yes? Okay. All right. Thank you. Let
12 me just ask you to step back.

13 (Prospective juror leaves side bar.)

14 THE COURT: I think --

15 MR. BRAFMAN: I'm not going to belabor this. If you
16 feel she should be challenged --

17 THE COURT: This is Juror Number 61. Okay. I will
18 excuse Juror 61.

19 (Prospective juror joins side bar.)

20 THE COURT: Ma'am, we are going to excuse you. We
21 will ask you to go downstairs to the jury room and tell them
22 you have been excused. Thank you very much for your candor.
23 Thank you.

24 (Prospective juror excused.)

25 (In open court; side bar ends.)

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1 THE COURT: Did anyone else have their hand up?
2 Yes?

3 THE PROSPECTIVE JUROR: I'm Juror Number 54.

4 THE COURT: Yes, sir.

5 THE PROSPECTIVE JUROR: I hired a personal injury
6 lawyer. I was satisfied with their services and have no
7 negative or positive.

8 THE COURT: Thank you, sir.

9 All right. If there are no other hands up, I will
10 resume the questions. Thank you.

11 Has anyone at any time worked for, applied for a job
12 in or had a close friend or relative employed in any law
13 enforcement capacity or position such as the U.S. Attorney's
14 Office, the Department of Justice, any law enforcement agency
15 such as the FBI, the U.S. Postal Inspection Service or any
16 regulatory agency like the SEC, FINRA, any state or local
17 police department, Attorney General's Office or District
18 Attorney's Office or any private security company or
19 investigation firm or any position connected to the criminal
20 justice system such as a jail or prison or probation or
21 parole?

22 Okay. The question is whether your own experience
23 or the dealings of your friend or relatives in law enforcement
24 would have an effect on your ability to be fair and impartial
25 to both sides. If so, please raise your hand.

Side Bar

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1 THE PROSPECTIVE JUROR: I have, you know --

2 THE COURT: Okay. Ma'am, I might ask you to come to
3 side bar. What is your number?

4 THE PROSPECTIVE JUROR: 26.

5 THE COURT: Okay. And you have relatives or
6 yourself have experience?

7 THE PROSPECTIVE JUROR: I did have relatives.

8 THE COURT: All right. Let me ask you to come to
9 side bar, please.

10 (The following occurred at side bar; prospective
11 juror joins.)

12 THE COURT: Yes, ma'am. You are Juror Number 26?

13 THE PROSPECTIVE JUROR: My brother is a corrections
14 officer in New York State and my brother-in-law was a
15 policemen in New York City.

16 THE COURT: Okay. Now, have they talked about their
17 job with you?

18 THE PROSPECTIVE JUROR: Not for a long time. One's
19 passed away and one's been retired a long time.

20 THE COURT: I see. Is there anything about what you
21 have learned in their jobs that would affect your ability to
22 be fair to both sides?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: Do you have any feelings in favor or
25 against law enforcement?

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Side Bar

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1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Versus people who are arrested?

3 THE PROSPECTIVE JUROR: No.

4 (Prospective juror leaves side bar.)

5 (In open court.)

6 THE COURT: Let's see who else. Is there anyone
7 else who would like to speak about their experience or close
8 relatives, experience in law enforcement?

9 Juror Number 1, please come forward.

10 (Side bar continues; prospective juror joins.)

11 THE COURT: Yes, ma'am.

12 THE PROSPECTIVE JUROR: My ex-husband applied to the
13 FBI and went through the second phase, I believe, but didn't
14 go further.

15 THE COURT: Okay. Is there anything about your
16 husband's experience with the FBI and his job application that
17 would affect your ability or your sense of the FBI?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: All right. Do you have any other
20 relatives in law enforcement or close friends?

21 THE PROSPECTIVE JUROR: Not any other. Applied for
22 it, but they're not in law enforcement.

23 THE COURT: Okay. Is there anything about that
24 experience that they've applied but have not ended up in law
25 enforcement that would affect your ability or your views about

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1 law enforcement?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Thank you.

4 (Prospective juror leaves side bar.)

5 (In open court.)

6 THE COURT: Is there anyone else who had their hand
7 up?

8 Second row? Yes, you are juror number -- yes. Come
9 forward. Are you Juror Number 9?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. Come forward. Thank you.

12 (Side bar continues; prospective juror joins.)

13 THE COURT: Yes, you're Juror Number 9?

14 THE PROSPECTIVE JUROR: Yes. My daughter is a
15 probation officer. She's a CLO, she works in --

16 THE COURT: She works as a probation officer in the
17 state or federal system?

18 THE PROSPECTIVE JUROR: City.

19 THE COURT: City? Okay. And you said CLO?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: What is that?

22 THE PROSPECTIVE JUROR: That is when they go to
23 court and they listen to the reports that the probation
24 officers send for the attorney to hear and make decisions.

25 THE COURT: I see. Okay.

Side Bar

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1 THE PROSPECTIVE JUROR: So she hears the report for
2 the children.

3 THE COURT: Oh, I see. This is on behalf of
4 children?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: I see. Is there anything about your
7 daughter's experience, her professional experience that would
8 have an effect on your ability to be fair and impartial?

9 THE PROSPECTIVE JUROR: Not at all.

10 THE COURT: Would you be able to put out of your
11 mind anything you might have heard from your daughter
12 regarding her job?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you.

15 THE PROSPECTIVE JUROR: You're welcome.

16 (Prospective juror leaves side bar.)

17 (In open court.)

18 THE COURT: Anyone else?

19 Okay. Your number, sir?

20 THE PROSPECTIVE JUROR: 16.

21 THE COURT: If you could, please come forward and
22 ask you to stand right here for one moment.

23 (Side bar continues.)

24 THE COURT: The question is we need to tell more
25 jurors to come tomorrow now in order to get them. Do you

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Side Bar

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1 think we need more?

2 MS. KASULIS: Possible.

3 THE COURT: How many more, 50 more?

4 MS. SMITH: Just in case.

5 MR. BRAFMAN: For tomorrow?

6 THE COURT: Yes.

7 MR. BRAFMAN: Yes.

8 THE COURT: We have to put out the order now. Okay.

9 Thanks.

10 (Prospective juror joins side bar.)

11 THE COURT: This is juror number 16. Yes?

12 THE PROSPECTIVE JUROR: So I have somewhat of a
13 balcony, like, there's a balcony that's across my window and I
14 live in a condo and there was one day, a kind of construction
15 project rectified on that balcony that basically obstructed my
16 entire view out my window. I did go -- I asked my dad and he
17 got a lawyer and said that, unfortunately, against the board
18 rules of the condo, that what was done through the
19 construction project was actually legal, but they had not,
20 there's usually supposed to be a board vote on any type of
21 construction project and that had not been done. So I
22 don't -- like, the lawyer said it was okay, but I don't know
23 because nothing really made sense.

24 THE COURT: Okay. So your father hired a lawyer to
25 help with you this, is that what you're saying?

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Side Bar

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1 THE PROSPECTIVE JUROR: Yes, he hired a lawyer to do
2 it.

3 THE COURT: And did that experience with a lawyer
4 result in feelings, negative feelings about lawyers?

5 THE PROSPECTIVE JUROR: A little bit, yes.

6 THE COURT: Obviously, we have a lot of lawyers in
7 this case.

8 THE PROSPECTIVE JUROR: Of course.

9 THE COURT: The prosecutors are lawyers. The
10 defense has lawyers. Would your feelings of lawyers affect
11 your ability to be fair to both sides?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: So you think you would be --

14 THE PROSPECTIVE JUROR: Somewhat impartial?

15 THE COURT: I want you to be impartial. I mean not
16 to favor one side?

17 THE PROSPECTIVE JUROR: Yes. Somewhat biased, you
18 mean? Yes, it might.

19 THE COURT: Okay. Can you explain that a little
20 further, please?

21 THE PROSPECTIVE JUROR: I don't know. I feel like
22 the lawyer didn't really -- I feel like it's somewhat of a
23 manipulated system somewhat and not everything always turns
24 out accurately despite -- how should I say this?

25 THE COURT: Okay.

CMH

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Side Bar

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1 THE PROSPECTIVE JUROR: I don't know. I feel like
2 sometimes the law can be twisted.

3 THE COURT: Okay. All right.

4 THE PROSPECTIVE JUROR: And it's just, I don't
5 really --

6 THE COURT: Would you feel that way with the lawyers
7 in this case, based on your past experience with lawyers?

8 THE PROSPECTIVE JUROR: Well, I don't know the
9 lawyers in this case, so --

10 THE COURT: Yes. So could you maintain an open mind
11 and listen carefully to the evidence that they present and the
12 testimony that they present?

13 THE PROSPECTIVE JUROR: I guess I could.

14 THE COURT: Well, do you have a doubt or concerns
15 that you could not?

16 THE PROSPECTIVE JUROR: I do have actual concerns.

17 THE COURT: Okay. You may step back, please.

18 (Prospective juror leaves side bar.)

19 THE COURT: This is Juror 16.

20 MR. BRAFMAN: There should be consent, I would
21 think.

22 MS. SMITH: Yes.

23 MS. KASULIS: Yes.

24 THE COURT: Juror Number 16 will be excused.

25 (Prospective juror joins side bar.)

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Side Bar

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1 THE COURT: Sir, we're going to excuse you to go
2 down to the second floor and tell them you have been excused
3 and you should get your paperwork. All right?

4 THE PROSPECTIVE JUROR: All right.

5 THE COURT: Thank you.

6 (Prospective juror excused.)

7 (In open court.)

8 THE COURT: Is there anything else?

9 What was your experience with lawyers? Oh, you want
10 to come forward? What's your number, please?

11 THE PROSPECTIVE JUROR: 43.

12 THE COURT: Please come forward.

13 (Side bar continues; prospective juror joins.)

14 THE COURT: Hi. How are you?

15 THE PROSPECTIVE JUROR: Very well. How are you
16 doing?

17 THE COURT: Come up closer.

18 THE PROSPECTIVE JUROR: I have a retired uncle in
19 Tennessee, criminal division of investigation, and state
20 police. His wife which was my mother's sister died with
21 cancer a few weeks ago and, again, it's nothing do with this
22 case because of fraud, but thinking about the medicine and the
23 previous condition with this gentleman that increased the
24 price of medicine with cancer and stuff, I may have a little
25 mixed feeling about it.

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Side Bar

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1 THE COURT: Well, it's fine to have an opinion or
2 feelings about anything that you read in the newspaper.
3 That's what --

4 THE PROSPECTIVE JUROR: In the past.

5 THE COURT: But the question is whether you could,
6 whether you have a state of mind that is fair and impartial to
7 both sides.

8 THE PROSPECTIVE JUROR: Yes. I think I wouldn't be
9 fair to him thinking about what he did with the previous
10 condition. Again, I don't know much about this case but as a
11 person, I don't have much respect for him.

12 THE COURT: Okay. All right. Well, let me ask you
13 to step back, please.

14 THE PROSPECTIVE JUROR: Sure.

15 (Prospective juror leaves side bar.)

16 MR. BRAFMAN: I've heard enough, Judge. I move for
17 cause.

18 THE COURT: Okay. We will dismiss Juror Number 43.

19 (Prospective juror joins side bar.)

20 THE COURT: Sir, we are going to dismiss you and ask
21 you to go down to the jury room on the second floor and tell
22 them you have been dismissed and get your paperwork.

23 (Prospective juror excused.)

24 (In open court.)

25 THE COURT: Did anyone else have their hand up on

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Side Bar

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1 the law enforcement question? Yes, ma'am.

2 THE PROSPECTIVE JUROR: Come forward?

3 THE COURT: Yes. Do you want to come forward,
4 please? You are Number 4, right?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Thank you.

7 (Side bar continues; prospective juror joins.)

8 THE COURT: Hi.

9 THE PROSPECTIVE JUROR: My husband's been in
10 corrections for 28 years.

11 THE COURT: Okay.

12 THE PROSPECTIVE JUROR: And I have my
13 brother-in-law, a police officer, and my niece, well my
14 brother-in-law he's retired now but my knees is.

15 THE COURT: NYPD.

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Is there anything about your relatives'
18 experiences with law enforcement that would affect your
19 ability to keep an open mind for both sides in this case?

20 THE PROSPECTIVE JUROR: No.

21 THE COURT: And would you be more inclined to
22 believe law enforcement witnesses over other witnesses?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: Would you be able to put out of your
25 mind what you might have heard from your relatives about the

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1 work in law enforcement and to decide this case with a fair
2 mind?

3 THE PROSPECTIVE JUROR: I hope I do.

4 THE COURT: Based on the evidence only in the case?

5 THE PROSPECTIVE JUROR: I hope I do.

6 THE COURT: Do you have any doubt or are you
7 confident that you can do that, that you would consciously
8 think about being fair minded to both sides? Could you do
9 that?

10 THE PROSPECTIVE JUROR: I'm trying, yes. I would
11 try to, yes.

12 THE COURT: Okay. Well, when you say you would try,
13 I'm sensing some difficulty.

14 THE PROSPECTIVE JUROR: Yes, because I want to do my
15 civic duty to be here.

16 THE COURT: I appreciate that. Do you have a slight
17 tendency to favor law enforcement in situations?

18 THE PROSPECTIVE JUROR: No, because most people are
19 good and bad, you know, no matter what position you are in.

20 THE COURT: That's true.

21 Now, let me ask you this. When you said you would
22 try, what was that in reference to? Would you try to be fair
23 to both sides?

24 THE PROSPECTIVE JUROR: To all the evidence I hear,
25 yes.

Side Bar

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1 THE COURT: Would you commit to deciding this case
2 based only on the evidence at trial and not allow what you
3 might have heard from your relatives about their jobs seep
4 into your considerations?

5 THE PROSPECTIVE JUROR: I really can't tell you
6 because I try to be as honest as I can.

7 THE COURT: Okay. I appreciate that. Given what
8 I've described to you in this case, have you ever had any
9 discussions with your relatives about their law enforcement
10 duties in relation to charges that are similar to the ones in
11 this case?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Let me ask you to just step back
14 for one second, please, just a few feet.

15 (Prospective juror leaves side bar.)

16 THE COURT: Any issues for this juror?

17 MR. BRAFMAN: No, Your Honor.

18 MS. SMITH: No.

19 THE COURT: All right. I'll ask that she maintain
20 her seat. Thank you.

21 (Prospective juror joins side bar.)

22 THE COURT: You can maintain your seat.

23 THE PROSPECTIVE JUROR: Thank you.

24 (In open court; side bar ends.)

25 THE COURT: Was there anyone else before we resume

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1 questioning? Thank you.

2 I remind you now that law enforcement witnesses such
3 as FBI agents and Government regulators will be testifying in
4 this case, but their testimony is not entitled to any greater
5 or lesser weight than that of any other witness. Rather, you,
6 if you serve as a juror, must be prepared to waive the
7 credibility of each witness who testifies and decide what
8 value their testimony has to the issues in this case.

9 (Continued on next page.)

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1 (Continuing.) (In open court.)

2 THE COURT: Is there anyone who could not do this?

3 Would the fact that you may have a personal
4 experience or a family member or a close friend involved in
5 law enforcement prevent you from deciding the case based
6 solely on the evidence and apply the law with fairness and
7 impartiality to both sides? If so, please raise your hand.

8 Have you or anyone in your family or close personal
9 friend ever been either a victim of a crime or accused of a
10 crime, including any financial crime?

11 And have you or any personal friend or close
12 relative ever been involved in a criminal case or
13 investigation in any way, for example, as someone who issues
14 or files a complaint or as a victim, a target, a subject, a
15 defendant, or a witness? If so, please raise your hand.

16 All right. We have Juror No. 1. Maybe what we will
17 do is hear from you at sidebar on these issues. Excuse us.

18 (Prospective juror present at sidebar.)

19 THE COURT: Yes, ma'am.

20 THE PROSPECTIVE JUROR: 2003, I was stationed in
21 southwest of England in the navy and I was a victim of sexual
22 assault. The person went to, after investigation, NCIS was
23 done, he was sentenced to four years in the brig and that was
24 it.

25 THE COURT: All right. As a result of that, what

1 I'm sure must have been a very difficult experience, have you
2 formulated any opinions about the criminal justice system or
3 about anything related to prosecution?

4 THE PROSPECTIVE JUROR: The experience was yes, very
5 difficult, but I feel that it was fair and I was guided
6 properly.

7 THE COURT: All right. Thank you. Let me ask you
8 to step back two feet, please.

9 (Prospective juror leaves sidebar.)

10 THE COURT: Does anyone have any issues with this
11 witness?

12 MS. KASULIS: No.

13 MR. BRAFMAN: No.

14 THE COURT: Ma'am, you can remain in your seat.

15 (Prospective juror leaves sidebar.)

16 THE COURT: I think the jurors need a restroom
17 break.

18 MR. BRAFMAN: So do the lawyers.

19 THE COURT: All you have to do is ask.

20 MR. BRAFMAN: I know.

21 (In open court.)

22 THE COURT: Ladies and gentleman, I understand some
23 of you may wish to have a brief bathroom break. We are happy
24 to accommodate you. I would ask you not to speak to anybody
25 and return as soon as you can to your seats. The bathrooms

1 are located, which way, Ms. Jackson? To the right. The CS0's
2 could direct you to the bathrooms. Please don't use your
3 phones. If you would like to take a restroom break, please
4 come back no later than 4:40. That is 12 minutes from now.
5 Thank you.

6 (Recess taken.)

7 (In open court.)

8 THE COURT: Have a seat. I'm sorry.

9 Can you go looking for 41 and 59. Is Juror No. 41
10 or 59 here? I am looking for 41 and 59.

11 Hi. I think we have everybody. This is who we have
12 been waiting for. We will continue our questions.

13 There was the question regarding whether you have
14 ever been a victim or accused of a crime and have any close
15 friends or relatives. Is there anyone who wants to be heard?

16 There is nobody else in this row, as far as I could
17 see.

18 Juror No. 26?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Come forward, please.

21 (The following occurred at sidebar; prospective
22 juror present.)

23 THE COURT: Yes, ma'am.

24 THE PROSPECTIVE JUROR: There was supposed to be a
25 modification on the house and it was like a scam, we paid

1 money and the next thing I know I heard from I guess the
2 courts in Manhattan that this person was on trial. The same
3 time there was a debt settlement company that did the same
4 thing to us. I paid them for several years and they didn't
5 pay all of the debts. And my son has been arrested.

6 THE COURT: Is there anything about your experience
7 as a victim of house repairs --

8 THE PROSPECTIVE JUROR: No, it's been a while now.
9 I'm just smarter.

10 THE COURT: Do you have any feelings or against the
11 prosecution or the defense?

12 THE PROSPECTIVE JUROR: No, not at all. Thank you.

13 THE COURT: Let me make sure there are no other
14 questions. Thank you.

15 (Prospective juror leaves sidebar.)

16 (In open court.)

17 THE COURT: Does anyone else have their hand up on
18 the right side?

19 Sir, why don't you come first? You are No. 33.

20 THE PROSPECTIVE JUROR: No. 33.

21 THE COURT: Yes.

22 THE PROSPECTIVE JUROR: A year ago December my
23 neighbor's house was getting robbed and I noticed because I
24 saw a guy walk up the side, I called 911. While we were
25 waiting, a guy came out and attacked me. So he put out an

1 order of protection. So the cops came. He got arrested but
2 they put an order of protection against him to come around me
3 and that still stands today.

4 THE COURT: Is there anything about that experience
5 that would prevent you from being fair and --

6 THE PROSPECTIVE JUROR: No, I'm just saying yes to
7 the question.

8 THE COURT: So you were basically a witness?

9 THE PROSPECTIVE JUROR: A witness. I guess I
10 started the altercation.

11 THE COURT: Thank you.

12 (Prospective juror leaves sidebar.)

13 (In open court.)

14 THE COURT: Ma'am, did you want to come forward?

15 (Prospective juror present at sidebar.)

16 THE COURT: You are number 38, correct?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: Hi, how are you, Juror No. 38?

19 THE PROSPECTIVE JUROR: Yes. My daughter was
20 assaulted when she was about 17. My granddaughter was
21 recently mugged about six months ago and my son was arrested
22 when he was about 19 for possession of a weapon.

23 THE COURT: Possession of what?

24 THE PROSPECTIVE JUROR: A weapon.

25 THE COURT: Is there anything about your relative's

1 experience with the criminal justice system that would bring
2 back feelings where you couldn't be fair and impartial toward
3 law enforcement or someone accused of a crime.

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Could you put aside or put out of your
6 mind the experiences that your relatives, your loved-ones and
7 decide this case based on the evidence?

8 THE PROSPECTIVE JUROR: Yes. My son was over 30
9 years ago and my daughter was years ago, but my granddaughter
10 was recently.

11 THE COURT: All right. Thank you. Did you have any
12 further questions anybody?

13 MS. KASULIS: No, Your Honor.

14 MR. BRAFMAN: No, Your Honor.

15 THE COURT: Thank you.

16 (Prospective juror leaves sidebar.)

17 (In open court.)

18 THE COURT: Anybody else? Juror No. 49, please come
19 forward.

20 Number 49.

21 (Prospective juror present at sidebar.)

22 THE COURT: Hi.

23 THE PROSPECTIVE JUROR: Hi.

24 THE COURT: Juror No. 49. What was your experience,
25 please?

1 THE PROSPECTIVE JUROR: My husband and I lost our
2 lifesavings because we were victims of a Ponzi scheme. I
3 don't know if that has anything to do with it.

4 THE COURT: Well, is there anything about that
5 experience that would influence your ability to be fair to
6 both sides in this case?

7 THE PROSPECTIVE JUROR: Well, I can't really say
8 because I don't know what the case is all about. I don't
9 know, but it does make me not trust people.

10 THE COURT: All right. Can you tell me as best you
11 can recall how the scheme worked, just briefly?

12 THE PROSPECTIVE JUROR: We invested our money with
13 someone that we knew that we trusted and it was gone.

14 THE COURT: Okay. Would that experience cloud your
15 ability to consider only the evidence in this case in deciding
16 the disputed facts?

17 THE PROSPECTIVE JUROR: I guess I would have to see
18 the evidence and to be able to say for sure. I can't....

19 THE COURT: Well, it would be important because we
20 can't in the middle of a trial say oh --

21 THE PROSPECTIVE JUROR: Yeah.

22 THE COURT: Certainly, if you have those feelings,
23 if you were selected and you started to feel that you couldn't
24 be fair anymore, we would want to know that, but hopefully
25 going through this process now we can avoid that. But the

1 point is that the evidence will be presented at the trial. I
2 don't want to characterize it one way or the other, but it
3 does involve charges of fraud and my question is whether, as I
4 describe the charges generally, whether that would resonate
5 with you or make you feel you couldn't be fair to both sides?

6 THE PROSPECTIVE JUROR: I don't know. I mean,
7 thinking about my experience, I get angry with it. I don't
8 know about this, but hopefully I would be fair. I'd like to
9 think I would be fair.

10 THE COURT: Let me just ask you to step back.

11 THE PROSPECTIVE JUROR: Sure.

12 (Prospective juror leaves sidebar.)

13 MR. BRAFMAN: Your Honor, there are going to be a
14 number of witnesses who will be testifying that they invested
15 with the defendant and believed they were defraud. I would
16 ask Your Honor to ask the juror if that were part of the case
17 would she identify with the victims simply because of what she
18 went through.

19 MR. AGNIFILO: I think the Government's theory is
20 that this is a Ponzi scheme.

21 THE COURT: I have heard that term in connection
22 with this case.

23 MR. AGNIFILO: But they may. If they don't use the
24 phrase, that is what it is.

25 THE COURT: Would a victim say those words?

1 MS. SMITH: I don't think it would --

2 MR. BRAFMAN: Some of the victims I think have on
3 their own referred to it as a Ponzi scheme. I don't know what
4 is going to come out of their mouths, but I would seem to
5 think that she --

6 MS. SMITH: I don't know if you have follow-up
7 questions that you want to ask about the witnesses. That is
8 fine with us.

9 THE COURT: Do you want me to say if the witness
10 testifies and uses the term Ponzi scheme?

11 MR. BRAFMAN: If this case involved -- part of the
12 people who claimed to have been victimized by the Defendant
13 and would she identify with the victims in a way that is
14 unfair to the defendant.

15 MR. AGNIFILO: I think one of the theories is
16 Shkreli knew many of the victims on a personal level.

17 THE COURT: Okay. You know I have been trying
18 really hard not to do it, but with your permission I will do
19 it. I don't want to be accused of characterizing evidence.

20 MR. AGNIFILO: We would never do that.

21 THE COURT: Ma'am, come back.

22 (Prospective juror present at sidebar.)

23 THE COURT: So if you were to hear testimony of
24 victims who said they knew the defendant and they relied on
25 his statements in making investments, would that evoke your

1 past experience and make it difficult for you to be fair
2 toward the defendant?

3 THE PROSPECTIVE JUROR: I think it might.

4 THE COURT: And if you heard a victim testify and
5 use the term Ponzi scheme, would that also affect your
6 ability?

7 THE PROSPECTIVE JUROR: Yeah.

8 THE COURT: When you say you think it might, would
9 you, nonetheless, be able to commit to being -- maintaining as
10 best you can a fair and impartial state of mind as you
11 evaluate the evidence in this case?

12 THE PROSPECTIVE JUROR: Yes, I would definitely look
13 at the evidence for sure.

14 THE COURT: Would you feel that you would want to
15 perhaps give some sympathy or favor toward somebody who
16 testifies and describes himself or herself as a victim?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Let me ask you to step aside
19 for one second.

20 (Prospective juror leaves sidebar.)

21 MR. BRAFMAN: We think she should be challenged for
22 cause.

23 THE COURT: All right. We will dismiss Juror No. 49.

24 MR. BRAFMAN: 49.

25 THE COURT: Okay. Thank you.

1 (Prospective juror leaves sidebar.)

2 THE COURT: Ma'am, you are excused. Go back to the
3 second floor.

4 (Prospective juror excused.)

5 (Continued on next page.)

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Side Bar

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1 (In open court.)

2 THE COURT: Was there anyone else who had their hand
3 up?

4 Okay. Sir, why don't you come forward.

5 THE PROSPECTIVE JUROR: 57.

6 THE COURT: Number 57? Yes, sir. Please come
7 forward.

8 (Side bar continues; prospective juror joins.)

9 THE COURT: Yes, sir.

10 THE PROSPECTIVE JUROR: So, I was convicted of a
11 crime.

12 I'm also here because the clerk told me I could
13 raise a hardship issue. Have you asked about the duration of
14 the trial and who can serve? I find I can't serve at this
15 point beyond two weeks because I will not be compensated and
16 I'm going to have financial hardship beyond that. So beyond a
17 two week level would make it a hardship for me. The crime is
18 an issue but it doesn't -- I don't feel it would influence me
19 in the case in any way.

20 THE COURT: Okay. You said you were not going to be
21 paid?

22 THE PROSPECTIVE JUROR: Right. Two weeks.

23 THE COURT: Is that your employer's policy.

24 THE PROSPECTIVE JUROR: That is the policy. I
25 determined it after we discussed it because I had no way of

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1 finding out.

2 THE COURT: And it's a hard and fast policy in terms
3 of -- what kind of work do you do?

4 THE PROSPECTIVE JUROR: I work for a not-for-profit
5 in Brooklyn that's in the employee handbook. It's very clear.
6 Beyond two weeks, they will not pay and I have to give them
7 the \$40.

8 THE COURT: You have to give them the \$40?

9 MR. BRAFMAN: That's a scam.

10 THE COURT: I'm sorry. Let me ask you stand back
11 for one moment.

12 (Prospective juror leaves side bar.)

13 THE COURT: I think we have to excuse Juror Number
14 57 for hardship.

15 (Prospective juror joins side bar.)

16 THE COURT: We're going to excuse you. We are
17 excusing Juror Number 57. I ask that you go down to the jury
18 room and tell them that and you should get your paperwork.
19 Thank you.

20 (Prospective juror excused.)

21 (In open court; side bar ends.)

22 THE COURT: Was there anyone else who had their hand
23 up?

24 Okay. We will continue with our questions then.

25 Thank you.

Side Bar

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1 Other than those who have already come up to talk to
2 me at side bar or have answered the questions, have any of you
3 been a witness or a party in a civil lawsuit or criminal case?
4 Again, if you've already raised your hand and come to side bar
5 to talk to us, you need not raise your hand again.

6 Has anyone ever been a witness at a grand jury
7 proceeding or a deposition?

8 THE PROSPECTIVE JUROR: I'm not sure if it is but
9 can I speak to you?

10 THE COURT: Yes, of course.

11 Juror Number 4 would like to speak to us at side
12 bar.

13 (The following occurred at side bar; prospective
14 juror joins.)

15 THE COURT: Yes, ma'am.

16 THE PROSPECTIVE JUROR: I'm a retired veterinarian
17 and three times, I was in court. One time, somebody accused
18 me of not paying them. I had proof and that was dismissed.
19 Another time there was an animal whose surgery I discontinued,
20 they were not doing well and I brought them to a specialty
21 facility and that person made a claim but never showed up.
22 That was dismissed. And the last time a pet did die in my
23 care before the reports came back and that basically resulted
24 in my favor by the judge that it was handled by.

25 THE COURT: These were lawsuits?

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1 THE PROSPECTIVE JUROR: Right.

2 THE COURT: So I don't know if this falls under --

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: But is there anything about that
5 experience with your --

6 THE PROSPECTIVE JUROR: Everything was positive.

7 THE COURT: Okay. Okay. And could you be fair in
8 this case?

9 THE PROSPECTIVE JUROR: I think I can.

10 THE COURT: Okay. And could you be confident that
11 you can?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. Thank you, ma'am.

14 THE PROSPECTIVE JUROR: Okay.

15 THE COURT: Thank you for letting us know.

16 (In open court; side bar ends.)

17 THE COURT: Is there anyone else that would have had
18 their hand up to the last question being a witness or a party
19 in a civil lawsuit if you haven't already up to side bar?

20 Oh, sorry.

21 THE PROSPECTIVE JUROR: I was in a deposition during
22 a personal injury case.

23 THE COURT: Okay. And is there anything about that
24 that experience that would affect your ability to be fair?

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: Thank you, sir.

2 Anyone else?

3 All right. Do any of you presently or have you in
4 the past had a dispute or claim with the United States
5 Government? And, again, if you already addressed this at side
6 bar, you need not again. Do any of you have a claim or
7 dispute with the federal Government, close friend or family
8 members?

9 Have you ever had a negative experience or been
10 involved in a dispute, conflict or litigation with any law
11 enforcement officer or Government agency? If so, please raise
12 your hand.

13 Are you currently or have you ever been a plaintiff
14 or a defendant or a party in any case other than those who
15 have already raised their hand?

16 Does anybody have any opinions about defense lawyers
17 or prosecutors that would prevent you from being a fair and
18 impartial juror in this case?

19 Have you ever sat on a grand jury or a regular trial
20 jury? If so, I'm going to ask you how long ago, whether it
21 was a civil or a criminal case and whether you reached a
22 verdict, but do not tell me the verdict. I will also ask you
23 whether it's a state or federal case.

24 Any jurors to my left?

25 Okay. Let's go to Juror Number, are you --

1 THE PROSPECTIVE JUROR: 18.

2 THE COURT: Yes, ma'am. Was it a civil or criminal
3 case?

4 THE PROSPECTIVE JUROR: It was a criminal case.

5 THE COURT: And did you reach a verdict?

6 THE PROSPECTIVE JUROR: Yes, we did.

7 THE COURT: Was this in state or federal court?

8 THE PROSPECTIVE JUROR: State court.

9 THE COURT: And was there anything about that
10 experience that would affect your ability to evaluate this
11 case fairly and impartially?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Thank you, ma'am.

14 Anyone else? Yes. You are Juror Number --

15 THE PROSPECTIVE JUROR: 20.

16 THE COURT: Yes, ma'am.

17 THE PROSPECTIVE JUROR: It was a criminal case,
18 state, and they reached a verdict.

19 THE COURT: Okay. Is there anything about the
20 experience that had an effect, an adverse affect on your
21 ability to be fair to both sides?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: All right. Anyone else?

24 Juror Number 26.

25 THE PROSPECTIVE JUROR: 26.

1 THE COURT: Yes, ma'am.

2 THE PROSPECTIVE JUROR: It was a criminal case in
3 the state and we reached a verdict. It was a long time ago.

4 THE COURT: Okay. And did you have any issues
5 arising from that service?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Anyone else?

8 Second row. Number 33.

9 THE PROSPECTIVE JUROR: I served on a grand jury.

10 THE COURT: Was that in state or federal court?

11 THE PROSPECTIVE JUROR: It was in the state or the
12 City, New York City.

13 THE COURT: New York City?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. Is there anything about your
16 experience as a grand juror that would affect your ability to
17 fairly evaluate the case or treat the parties fairly in this
18 case?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: Anyone else on this row?

21 All right. Can we have your number again, ma'am?
22 I'm sorry.

23 THE PROSPECTIVE JUROR: 38.

24 THE COURT: Yes, ma'am.

25 THE PROSPECTIVE JUROR: It was federal court and we

1 reached a verdict. And state court and reached a verdict.

2 THE COURT: Were any of those cases criminal cases?

3 THE PROSPECTIVE JUROR: Yes, criminal.

4 THE COURT: Was it within the last five years?

5 THE PROSPECTIVE JUROR: Six years, I think.

6 THE COURT: Was there anything about your experience
7 as a juror in cases in state and federal court that would
8 affect your ability to be fair and impartial here?

9 THE PROSPECTIVE JUROR: No.

10 THE COURT: Anyone else on that row?

11 Your number, sir.

12 THE PROSPECTIVE JUROR: Number 39. I sat on a jury
13 in New York State. I believe it was a civil suit. We did
14 reach a verdict and there was nothing about that experience
15 that would impact.

16 THE COURT: Thank you for your response.

17 Yes, Juror 40.

18 THE PROSPECTIVE JUROR: Yes. Criminal case, many,
19 many years ago. Civil case, ten years.

20 THE COURT: So had you a criminal case many years
21 ago. Was it in state or federal court?

22 THE PROSPECTIVE JUROR: It was state.

23 THE COURT: Okay. And your civil case?

24 THE PROSPECTIVE JUROR: State.

25 THE COURT: State also?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you reach a verdict in both cases?

3 THE PROSPECTIVE JUROR: Yes. One came went to
4 trial. One was just --

5 THE COURT: Settled?

6 THE PROSPECTIVE JUROR: Settled, yes. The other one
7 went to trial, but I was an alternate juror.

8 THE COURT: You were an alternate?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you. Is there anything about that
11 experience that would affect your ability to be fair to both
12 sides in this case?

13 THE PROSPECTIVE JUROR: No. No.

14 THE COURT: Thank you, sir.

15 Who else? Your number, ma'am?

16 THE PROSPECTIVE JUROR: 44.

17 THE COURT: Could you stand, please?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: Yes, ma'am. Was it a state or federal
20 case?

21 THE PROSPECTIVE JUROR: A state, civil court.

22 THE COURT: And did you reach a verdict?

23 THE PROSPECTIVE JUROR: No, they pleaded.

24 THE COURT: They settled it?

25 THE PROSPECTIVE JUROR: Settled, yes.

1 THE COURT: Is there anything about that experience
2 that would affect your ability in this case to serve as a fair
3 juror?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Thank you, ma'am.

6 Anyone else? Yes, sir.

7 THE PROSPECTIVE JUROR: 45.

8 THE COURT: Yes, sir.

9 THE PROSPECTIVE JUROR: State civil court. They
10 settled.

11 THE COURT: All right. Is there anything about that
12 juror experience that would affect your ability to serve in
13 this case?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: All right. Thank you.

16 Anyone else?

17 Sorry, ma'am. Your number?

18 THE PROSPECTIVE JUROR: 60. It was a civil case a
19 long time ago, a local court in Mineola, and nothing about
20 that would impact me sitting here.

21 THE COURT: And did you reach a verdict ma'am?

22 THE PROSPECTIVE JUROR: Yes, we did.

23 THE COURT: Thank you very much.

24 I am just going to ask a few more -- well, I have
25 just a few more questions.

1 Did any of you ever serve as the foreperson? No.

2 Did any of you have difficulty accepting the judge's
3 instructions on the law?

4 Have you, members of your family or close friends,
5 ever had any formal education, training, exposure or work
6 experience in financial services, banking, pharmaceuticals,
7 the stock market or securities industry? And this is other
8 than those who have already come up or have raised their hand
9 and talked about their experience in those fields.

10 Is there anyone else who would like to share any
11 experiences or not like to, but would you please if you have
12 such experience? No.

13 And for those of you who have talked to us
14 previously about your experience in financial services,
15 banking, pharmaceuticals, the stock market or securities,
16 would all of you be able to maintain a fair and open mind in
17 this case and decide the case based only on the evidence at
18 this trial? If not, raise your hand.

19 Do you or a family member or close friend regularly
20 invest in the stock market, hedge fund or privately issued
21 securities? If so, please raise your hand.

22 Juror Number 40 -- 39? Okay. Juror Number 39.

23 Is there anything about your experience in
24 investing --

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: -- that would affect your ability?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Have you invested in the stock
4 market or hedge fund or privately issued securities?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Which of the above?

7 THE PROSPECTIVE JUROR: The stock market.

8 THE COURT: Okay. Thank you.

9 And we have also Juror Number --

10 THE PROSPECTIVE JUROR: 31.

11 THE COURT: Yes, ma'am.

12 THE PROSPECTIVE JUROR: Similarly, and no.

13 THE COURT: Similarly, you've invested in the stock
14 market?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Thank you.

17 THE PROSPECTIVE JUROR: Self directed 401-K's, but
18 not individual stocks.

19 THE COURT: All right. Thank you. Is there
20 anything about your investing experience that would affect
21 your ability in this case to be fair?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: Anyone else?

24 Juror Number 38.

25 THE PROSPECTIVE JUROR: I don't currently regularly

1 invest, but I have invested in the past and I had investments.

2 THE COURT: Okay. In the stock market, hedge funds
3 or privately issued securities?

4 THE PROSPECTIVE JUROR: Stock market.

5 THE COURT: Okay. And is there anything about that
6 experience that would cloud your ability or prevent you from
7 being fair and impartial to both sides?

8 THE PROSPECTIVE JUROR: No, there isn't.

9 THE COURT: Thank you.

10 Did I have a hand? Yes, you are Number 27.

11 THE PROSPECTIVE JUROR: Yes. I've invested in the
12 stock market.

13 THE COURT: All right. Same question for you, sir.
14 Could you be fair and impartial?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you.

17 You are number 37. Yes, sir.

18 THE PROSPECTIVE JUROR: Likewise, I invested, but it
19 wouldn't affect me.

20 THE COURT: Thank you. In the stock market, sir?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. Anyone else?

23 All right. If you have invested in the stock
24 market, have you used brokers or conducted your own trading
25 personally? We know from one juror it was self-directed. Did

1 anyone use a broker?

2 Okay. Did that experience have any affect on your
3 ability to be fair to both sides in this case? Juror
4 Number --

5 THE PROSPECTIVE JUROR: 27.

6 THE COURT: 27?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: Juror Number 29 -- 31. I'm sorry. The
9 answer is no?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Is there anyone else?

12 Juror Number 38.

13 THE PROSPECTIVE JUROR: Yes. No problem.

14 THE COURT: No broker?

15 THE PROSPECTIVE JUROR: I have a brokered account
16 but I opened it myself.

17 THE COURT: Okay. Thank you.

18 Anyone else?

19 Yes. Juror Number --

20 THE PROSPECTIVE JUROR: 45.

21 THE COURT: Yes, sir.

22 THE PROSPECTIVE JUROR: Not a problem.

23 THE COURT: Okay. Have you used a broker?

24 THE PROSPECTIVE JUROR: Yes, I did.

25 THE COURT: Thank you. And you could be fair?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Anyone else?

3 THE PROSPECTIVE JUROR: Yes, ma'am. I used a
4 broker, but it's not a problem.

5 THE COURT: You used a broker. Can you be fair?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you.

8 Does anyone have or have you used in the past a
9 financial advisor who manages your assets? Raise your hand.
10 Juror Number 27.

11 THE PROSPECTIVE JUROR: I have a financial advisor
12 that manages my assets.

13 THE COURT: Is there anything about that experience
14 that would cause you to have preconceived views --

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: -- for or against either side in this?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Thank you. Anyone else? Juror
19 Number --

20 THE PROSPECTIVE JUROR: 22.

21 THE COURT: Yes, ma'am. You use a financial
22 advisor?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Is there anything about that experience
25 that would cause you to have an unfair, less than a fair and

1 impartial mind?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Could you do that?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Yes, sir. Number.

6 THE PROSPECTIVE JUROR: 41.

7 THE COURT: Yes, sir.

8 THE PROSPECTIVE JUROR: I used a financial advisor.

9 THE COURT: And could you be fair and impartial to
10 both sides?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you.

13 Now, if there are no other hands, I just have a few
14 more questions. A person accused of a crime is entitled to
15 the presumption of innocence unless and until their guilt is
16 proven beyond a reasonable doubt after all the evidence has
17 been presented.

18 Would you have any difficulty in keeping an open
19 mind during the trial while the evidence is being presented
20 and following that principle of law that is the presumption of
21 innocence throughout this trial? Would anyone have trouble
22 doing that? If so, please raise your hand.

23 You may not discuss the evidence, witnesses or
24 testimony with anyone during the course of the trial even with
25 your fellow jurors when you retire to the jury room and not

1 with your family members either or close friends. You would
2 only be able to discuss this case with your fellow jurors
3 after all the evidence has been presented and after I have
4 given you instructions on the law.

5 Will you be able to follow these instructions of not
6 speaking about the case with anybody?

7 Would you all also commit, if selected, not to
8 research or read about anything relating to this case or to
9 Mr. Shkreli? Would you commit to conscious avoidance of any
10 reports, radio or media about this case or Mr. Shkreli during
11 the duration of this case? Is there anyone who have
12 difficulty doing that? Raise your hand.

13 Is there anything about the fact that this is a
14 criminal case or the nature of the charges or any other reason
15 that would interfere with your ability to decide this case
16 fairly and objectively?

17 Is there anything that I have not asked you that I
18 should know regarding your ability to be fair and impartial to
19 both parties in this case? If there is anything, please raise
20 your hand.

21 Is there anything that is in your mind or in your
22 experience that we should know about or that if you were in a
23 position to be called upon, to be charged with an offense,
24 that you would not want somebody with your frame of mind
25 sitting on your jury or the jury of a loved one or family

1 close family member?

2 Yes. Juror Number --

3 THE PROSPECTIVE JUROR: 29.

4 THE COURT: Please come forward.

5 (The following occurred at side bar; prospective
6 juror joins.)

7 THE PROSPECTIVE JUROR: So, I just graduated my
8 doctorate and I know that I'm going to apply for a job and I
9 have to have a job by September because for financial reasons
10 and I'm concerned that I'm distracted and I don't want to be
11 biased, I mean, biased or being distracted while evidence is
12 being presented.

13 THE COURT: Well, you said you don't have to apply
14 for a job until September?

15 THE PROSPECTIVE JUROR: No. I have to have a job by
16 September in order to pay my student loans and be financially
17 sound.

18 THE COURT: So you are going to be looking for jobs?

19 THE PROSPECTIVE JUROR: Yes. I've been looking and
20 putting of interviews because we've been running late.

21 THE COURT: So six weeks from 9 to 5:30 --

22 THE PROSPECTIVE JUROR: I've been trying to do the
23 right thing and keeping an open mind, but I'm concerned about
24 the timeline especially since we're after 5 now.

25 THE COURT: Yes, we are. Let me ask you to step

1 back.

2 (Prospective juror leaves side bar.)

3 THE COURT: Does anyone object to excusing this
4 juror?

5 MR. BRAFMAN: No. She looks kind of frantic at this
6 point.

7 THE COURT: Okay. This is Juror Number --

8 MR. BRAFMAN: 29.

9 THE COURT: Okay. We will excuse Juror 29 without
10 objection.

11 (Prospective juror joins side bar.)

12 THE COURT: We are going to excuse you. You can go
13 down to the second floor where you checked in and tell them
14 you're excused and get your paperwork. God luck with your job
15 search.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Is there anyone else who would like to
19 raise their hand in response to any questions that I have
20 asked? All right.

21 (Side bar continues.)

22 THE COURT: Now is the chance we can excuse
23 everybody, tell them to come back. We have to call in 50 more
24 jurors. I think we are shooting for 50. We've asked for more
25 but our yield will probably be closer to 50 than 70 tomorrow.

1 How many do we have left?

2 MS. KASULIS: We struck 15 from 62 total.

3 MR. BRAFMAN: I'm sorry?

4 THE COURT: 15 from 62.

5 MR. BRAFMAN: 47.

6 THE COURT: So we need 18. We only have 7.

7 MS. KASULIS: We have seven. Okay.

8 MS. SMITH: And we're still going to do the
9 questions about their employment, the juror questionnaire?

10 THE COURT: Yes, but I don't think these are
11 disqualifiers.

12 MS. SMITH: No.

13 THE COURT: But I don't have any other questions
14 unless anyone has any other questions to ask. There was a
15 juror who came late. She was the last juror on the list. We
16 haven't really followed up from some of these questions. So
17 what I propose is excuse these jurors and ask them to come
18 back tomorrow at noon.

19 MR. BRAFMAN: Okay.

20 THE COURT: Or 1:00.

21 MR. BRAFMAN: Whatever you want, Judge.

22 THE COURT: And then hopefully we can get through
23 the next group of jurors and we will be in a position to do
24 the questionnaires and the peremptories.

25 (End of side bar.) (Continued on next page.)

1 (In open court.)

2 THE COURT: Ladies and gentleman, I want to thank
3 you again for your patience. We will be continuing this
4 process tomorrow. I will not need you to come in tomorrow
5 until 1 o'clock. 1 o'clock will be the time that you will
6 report to the jury clerk on the second floor. At that time we
7 will go through additional processes with all of you. We will
8 at that point, we hope, have a jury selected and be able to
9 begin trial sometime tomorrow afternoon.

10 In the meantime, I would ask you please to remember
11 not to discuss this case with anybody. Not to allow anyone to
12 contact you regarding this case or discuss the case with you,
13 and that you report any such contact to me or my staff. In
14 addition, don't discuss it in front of other jurors if such a
15 thing does happen, and please avoid all media. Please don't
16 listen to or read any media about this case or about Mr.
17 Shkreli.

18 If you would kindly return at 1 o'clock, I would be
19 very grateful. We are almost finished with our selection.

20 There was one juror who I would like to ask to stay
21 for a few minutes. We might need to speak with her. If I
22 recall, it is No. 63. She was given number 63. We had some
23 additional questions for you, ma'am.

24 So the rest of you may go down. You are excused for
25 the evening. Please come back. Thank you very much.

1 (Jury exits the courtroom.)

2 THE COURT: We are going to examine this one juror
3 as a follow-up.

4 (Prospective juror present at sidebar.)

5 THE COURT: Ma'am, thank you, you had a doctor's
6 appointment, right?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Have a seat. I have a few questions.
9 Because you came later, we didn't get to ask you. I would
10 remind you that you are still under oath. If you could answer
11 these questions as conscientiously and honestly as you can, we
12 would appreciate it.

13 THE PROSPECTIVE JUROR: Okay.

14 THE COURT: I may have asked you this before, if I
15 have, then we can move forward.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: But I believe that you were here when I
18 asked about having heard about this case in the media.

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: And have you heard anything about this
21 case at all that would affect your ability to be fair to both
22 sides?

23 THE PROSPECTIVE JUROR: No. No.

24 THE COURT: I did ask you about the six weeks that
25 would be required for jury service, from 9:00 until 5:30.

1 Would that pose any undue hardship or inconvenience for you?

2 THE PROSPECTIVE JUROR: Well, right now, yeah, I
3 have my doctor's appointment and he scheduled a procedure for
4 the end of the month.

5 THE COURT: For the end of July?

6 THE PROSPECTIVE JUROR: Yeah. So I think that's
7 beyond the --

8 THE COURT: Yes, I will excuse you under those
9 circumstances.

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: I just want to confirm your name. Is
12 that it?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: I believe on this list --

15 THE PROSPECTIVE JUROR: I am 63 now.

16 THE COURT: She is this person (indicating). Okay.
17 She is 63 on the list.

18 I will excuse you and wish you well with your
19 procedure. Thank you so much for coming back.

20 (Prospective juror excused.)

21 THE COURT: So we are all on the same page about her
22 name. This is it.

23 MS. KASULIS: Yes.

24 MS. ZELLAN: Yes.

25 THE COURT: Is there anything else we need to

1 discuss right now?

2 MR. BRAFMAN: I think the Government wants to ask a
3 question with regard to scheduling.

4 MS. KASULIS: If we bring the pool back at 1:00 and
5 we do the questionnaire, realistically we can get to openings.
6 Should we have our first witness here or schedule them
7 Thursday morning?

8 THE COURT: I think the way we are going -- Sandra,
9 can you come over here.

10 She has been in touch with the jury clerk. We are
11 asking for 150, but we are not going to get that number. What
12 is the realistic number of people we are expected to see?

13 THE COURTROOM DEPUTY: 140.

14 THE COURT: 140. And we will see what comes.
15 We are at 46. So we really could go forward.

16 MS. SMITH: Just in case.

17 THE COURT: I have asked all of my questions. I
18 don't know if anyone else has any other questions.

19 MS. SMITH: There was the one juror that we raised
20 some concern about in terms of demeanor.

21 MS. KASULIS: I don't think we raised it with the
22 Judge.

23 THE COURT: I'm sorry?

24 MR. BRAFMAN: There is a juror who is aggravated in
25 the upper left-hand corner.

1 THE COURT: The far left.

2 MS. KASULIS: He is talking to himself. The juror
3 next to him is uncomfortable. I think he made the sound. He
4 ran out.

5 MR. BRAFMAN: I think there was a sense of urgency
6 of him having to leave the minute we broke. It may be that he
7 was anxious today. Let's see what he brings tomorrow.

8 MS. KASULIS: Considering the low number we have --

9 THE COURT: Let's put a circle around his name so we
10 can revisit it tomorrow.

11 MS. KASULIS: He was number 19.

12 THE COURT: Number 19. I do remember he was
13 slouching, almost laying down in the seat and he made a loud
14 to moaning sound, which was a bit surprising.

15 MS. SMITH: And the paralegal and agents have
16 noticed that he has been talking to himself.

17 MR. BRAFMAN: I'm starting to talk to myself.

18 THE COURT: I'm sure you have jewels of wisdom
19 coming out of your mouth, except when you are insulting me. I
20 am kidding.

21 MR. BRAFMAN: This is the longest peremptory
22 challenge I have ever argued in my entire life, so you are in
23 my record book. The longest challenge for cause.

24 THE COURT: You ultimately prevailed.

25 MR. BRAFMAN: Yes, I did.

1 THE COURT: We will keep an eye on him. The timing
2 is this: We are going to have hopefully 40 to 50 more jurors
3 tomorrow. I don't really know that we should spend the time
4 going through all of them. We should have an agreement once
5 we get to X number that we can let them go. There is no way
6 to know that until we start hearing from them.

7 MS. SMITH: We may get 10 who can do a six-week
8 trial.

9 THE COURT: I think our yield is between 25 to 30
10 percent.

11 MR. BRAFMAN: You want us here at 9 o'clock.

12 THE COURT: We will just start as soon as they are
13 all here. We will line them up. We will get the questions.
14 We will bring the rest of the group back at 1:00. We will
15 give an early lunch break and they will read off the
16 questionnaires that I gave you and then you will do your
17 peremptories.

18 Start thinking about that now so we don't have to
19 give them a big break.

20 MR. BRAFMAN: So for scheduling purposes, even if we
21 open, that we will just stop at the end of the day.

22 MS. KASULIS: We will have witnesses first thing
23 Thursday morning.

24 THE COURT: Yes.

25 MS. KASULIS: Thank you, Judge. 9:00 a.m. tomorrow.

1 THE COURT: Yes, please. Just in case something
2 comes up there is always time to address an unexpected matter.

3 MS. HURTADO: Let me inquire, if there is a
4 questionnaire on behalf of the press corps --

5 MR. BRAFMAN: It is not a questionnaire.

6 It is pedigree information.

7 MS. HURTADO: And also the list of witnesses or
8 potential people whose names might come up. I understand it
9 is a joint list.

10 MS. SMITH: Yes.

11 MR. BRAFMAN: Many of them are just names that might
12 come up, not necessarily witnesses.

13 MS. HURTADO: There was a lot.

14 MS. SMITH: I don't know that we have the judge's
15 final list.

16 MS. HURTADO: That's why I was asking if there was a
17 possibility that we can get a copy.

18 THE COURT: We have the list that we he read. Does
19 anybody object to giving it to --

20 MR. BRAFMAN: No.

21 MS. HURTADO: And I will share it with everybody.

22 THE COURT: There was one other thing that I was
23 going to address. I think we had the sketch artist wanted to
24 speak to me. From what I have been told by my staff who has
25 observed the sketches, they were the back of the head and

1 maybe an oblique partial side of the face. It wasn't a face
2 that was being sketched. I know I said no faces could be
3 sketched, so they might have interpreted that a partial was a
4 violation.

5 MR. BRAFMAN: I don't think you have to worry.

6 MS. HURTADO: You bear no resemblance to the people.

7 THE COURT: Okay. Have a good night.

8 MR. BRAFMAN: You, too. Thank you, Judge.

9 MS. KASULIS: Thank you, Judge. See you tomorrow
10 morning.

11 (Matter adjourned to June 28, 2017 at 9:00 a.m.)

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